

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 10-CR-74(JFB)  
 :  
 -against- : United States Court  
 : Central Islip, NY  
 HERIBERTO MARTINEZ, :  
 CARLOS ORTEGA, :  
 : February 21, 2013  
 Defendants. : 9:30 a.m.  
-----X

BEFORE:

HONORABLE JOSEPH F. BIANCO  
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government: LORETTA E. LYNCH  
UNITED STATES ATTORNEY  
BY: JOHN J. DURHAM, AUSA  
CARRIE N. CAPWELL, AUSA  
RAYMOND A. TIERNEY, AUSA  
610 Federal Plaza  
Central Islip, NY 11722-4454  
  
For Defendant: ELIZABETH E. MACEDONIO, ESQ.  
Martinez ARNOLD J. LEVINE, ESQ.  
  
For Defendant: IRA D. LONDON, ESQ.(not present)  
Ortega MARIANNE S. RANTALA, ESQ.  
  
Court Reporters: STEPHANIE PICOZZI  
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United States District Court  
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Proceedings recorded by computerized stenography.  
Transcript produced by CAT.

Proceedings

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1 M O R N I N G S E S S I O N

2 (Appearances noted.)

3 THE COURT: Mr. Levine, I signed your request  
4 with regard to the hotel. I'm sorry I didn't see it  
5 sooner; otherwise, I would have taken care of that.

6 MR. LEVINE: Thank you.

7 THE COURT: Defendants are present.

8 I did receive a copy of the Government's  
9 disclosure with regard to Ms. Santos, to the defense, and  
10 I received Ms. Macedonio's letter, again making a motion  
11 for a mistrial and for other relief.

12 And I assume, Ms. Rantala, you join in that  
13 letter?

14 MS. RANTALA: I would, your Honor.

15 THE COURT: I just wanted the Government to go  
16 through some of these questions that were answered by the  
17 letter. But Mr. Durham, I would like you to go through  
18 the questions that are on the bottom of page 4 or the top  
19 of page 5.

20 If it's a written agreement, a lot of it is  
21 answered by the agreement itself. But since this was an  
22 oral promise, to the best of your ability, you should try  
23 to answer those questions so she has enough information as  
24 possible.

25 Obviously, she can question the witness

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1 regarding her understanding, but she's entitled to as much  
2 information as possible from the Government with respect  
3 to this promise.

4 I'll let you go through that.

5 MR. DURHAM: Yes, your Honor.

6 With respect to question one, those discussions  
7 were with Special Agent James Lopez, Tariche and myself.

8 With respect to question two, the approximate  
9 day, time and place that the promise was made, that is  
10 very difficult to characterize. Most significant of those  
11 discussions would have been the September of 2011, after  
12 we received notice from the Marshals Service that Santos  
13 had been accepted in the program.

14 We had conversations with her where we relayed  
15 the supplemental letter that was filed. She had been  
16 accepted into the program; however, she needed to provide  
17 truthful information, be with us and, if necessary, to  
18 testify.

19 Number three, that was the circumstances -- that  
20 was the primary conversation. There may have been other  
21 conversations, you know, leading up to that where similar  
22 representations were made. It may not have been in the  
23 exact terms or that clearly, but that was the substance of  
24 the conversation.

25 The copy of the written agreement with the

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1 Marshals Service, what happens when she's accepted in the  
2 program, the marshals send the United States Attorney's  
3 Office a letter saying that she has been accepted and asks  
4 us to instruct her that she needs to continue to comply  
5 and be available to testify, which is what we did in  
6 September of 2011.

7 No other law enforcement agencies were a party  
8 of this informal grant of immunity. Suffolk County Police  
9 Department or other offices, in agreement with the United  
10 States attorneys, primarily with us to a lesser extent.

11 The informal range of immunity. If she left  
12 something out, and if she says something on the stand, she  
13 has no protection from that.

14 With regard to question number seven, I think --

15 THE COURT: Let me go back. If it's something  
16 that she previously disclosed to the Government and admits  
17 to it on the stand, that is the scope of the  
18 nonprosecution?

19 MR. DURHAM: Correct your Honor. If there is  
20 some crime she never disclosed or of talked to us, and she  
21 admits to that, she has no protection.

22 With respect to number seven, that is a  
23 prosecutorial discretion. Why we elected not to do that  
24 is not relevant to this defendant.

25 THE COURT: Okay. I think that answers the

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1 questions, Ms. Macedonio, but if there is any follow-up  
2 with respect to any of those -- I'll go back to your  
3 request for a mistrial in a moment. But with respect to  
4 the additional information requested, I think that  
5 satisfies it.

6 MS. MACEDONIO: It is difficult to say it  
7 satisfies it. I think Mr. Durham did the best he could,  
8 because there is no written formal agreement. I'm not  
9 suggesting that he's trying to hide the ball before the  
10 Court, but I'm certain there were ongoing conversations  
11 with this witness wherein she was assured, if not  
12 promised, that she would not be prosecuted.

13 THE COURT: You said that.

14 MS. MACEDONIO: I know. I'm acknowledging that.  
15 I don't have any follow-up questions.

16 THE COURT: Okay. Is there anything else you  
17 might add then?

18 MS. MACEDONIO: No, there is nothing else I want  
19 to add to my letter, Judge.

20 THE COURT: Thank you.

21 Ms. Rantala, anything else?

22 MS. RANTALA: No, your Honor.

23 THE COURT: The motion for a mistrial is again  
24 denied. The case law is clear on this.

25 Ms. Macedonio cites some of it in her letter,

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1 but I also found it in some detail where Brady material or  
2 impeachment material -- what the standard is. It's U.S.  
3 versus Barlow, B-A-R-L-O-W, 732 F.Supp.2d 1, Eastern  
4 District of New York, August 5, 2010.

5 I adopt the standard contained in there, and I  
6 will not belabor the record, especially because we have a  
7 jury waiting.

8 I might write a quick decision on this, but the  
9 bottom line is the following: As I said yesterday, I  
10 believe that disclosure was insufficient in terms of there  
11 being an oral promise not to prosecute the witness. I  
12 don't believe it was in bad faith. I believe the  
13 prosecutors believed that, I guess, that it was apparent  
14 from the circumstances, given that she was coming in --  
15 and they disclosed, obviously, that she is in the program.

16 She said on direct something along the lines:  
17 as long as she complies. That was her obligation, in  
18 part, to comply with the program.

19 So there wasn't an effort, in my view, to  
20 conceal this from the defense. It appears that the  
21 Government thought it was obvious under the circumstances.

22 But the question under the law is whether or not  
23 the defense had an effect for the use of that material or  
24 if they were prejudiced in some way. I don't believe  
25 yesterday they were prejudiced in any way.

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1 And I've reviewed Ms. Macedonio's letter, and  
2 I've gone back to the opening statements, because one of  
3 the points she made in the letter, if she had known there  
4 they would have mentioned it in the opening.

5 I went back to the opening, and the opening very  
6 clearly -- Mr. Lee in a broad fashion, impeaches all of  
7 the cooperating witnesses. They are working off the  
8 street and so on.

9 So all the benefits conferred on them was done  
10 extensively, with a very broad brush.

11 Could they have pointed to Ms. Santos  
12 specifically if they had that particular piece of  
13 information? Possibly, but I don't believe that in any  
14 way prejudices the defendant.

15 The issue for motives for lying was front and  
16 center in the opening and was well covered. With this  
17 witness, it came out on the cross while she was still on  
18 the stand.

19 They've had another night to prepare to cross  
20 her. Additionally, they have the Government's information  
21 today in answer to their questions. I believe they can  
22 make full use of this information with respect to this  
23 witness.

24 And in the case as a whole, I see no prejudice  
25 or no inability to make effective use of the material in

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1 connection with the trial.

2 So the drastic remedy of a mistrial is not  
3 warranted and is denied.

4 I will say, though, with respect to -- again,  
5 with respect to the rest of the witnesses in the case, I  
6 don't want there to be any other issues like this with  
7 respect to the witnesses. If the notes are not legible,  
8 the Government has to type them up for the defense. And  
9 certainly if there is anything else of this nature, the  
10 Government has to make sure that it is disclosed in  
11 advance of the witness taking the stand so we don't have  
12 this witness -- so we don't have that again.

13 MR. DURHAM: Your Honor, this witness is  
14 uniquely situated. All of the other witnesses pled guilty  
15 in a formal written agreement.

16 THE COURT: Any other issues?

17 MS. MACEDONIO: No, your Honor.

18 MS. RANTALA: Nothing from Mr. Ortega.

19 THE COURT: All right. We'll bring the witness  
20 in.

21 (Witness enters.)

22 (Whereupon, the jury at this time enters the  
23 courtroom.)

24 THE COURT: Please be seated.

25 Good morning, members of the jury. I'm happy to



**C. Santos - Cross/Macedonio**

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1 have Juror 121 back.

2 We're ready to continue with the trial.

3 As you recall, when we broke yesterday  
4 Ms. Santos was on cross-examination by Ms. Macedonio.

5 We'll continue with that point.

6 Ms. Santos, I again remind you, you are under  
7 oath. Do you understand?

8 THE WITNESS: Yes.

9 THE COURT: Again, move forward closer to the  
10 mike.

11

12 **C A R L A S A N T O S,**

13 called as a witness, having been previously  
14 duly sworn, was examined and testified further  
15 as follows:

16 **CROSS-EXAMINATION**

17 **BY MS. MACEDONIO: (Continued)**

18 Q Yesterday when we broke, I was in the middle of  
19 questioning you.

20 A Yes.

21 Q Since that time, has anyone spoken to you about your  
22 testimony?

23 A No.

24 Q No one from the prosecution team has spoken to you  
25 about your testimony?

**C. Santos - Cross/Macedonio**

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- 1 A No.
- 2 Q And no one from the Marshals Service?
- 3 A No.
- 4 Q Or the agents?
- 5 A No.
- 6 Q And you testified that your name was La Mania?
- 7 A Yes.
- 8 Q And we established that -- in the translation what
- 9 that means?
- 10 A Yes.
- 11 Q You testified that a mother would do anything for her
- 12 child, right?
- 13 A Yes.
- 14 Q Isn't it a fact, Ms. Santos, that your daughter has
- 15 the nickname Mania Ticita, M-A-N-I-A T-I-C-I-T-A?
- 16 A Everybody knew her by her name, Ticita.
- 17 Q That was her given name?
- 18 A Yes.
- 19 Q She also had a nickname?
- 20 A She didn't have an official nickname.
- 21 Q No one called her Mania Ticita?
- 22 A One or two people would call her that, because they
- 23 would call her by her name.
- 24 Q What does that translate?
- 25 A Basically, little maniac.

**C. Santos - Cross/Macedonio**

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1 Q When you talked yesterday about all those drive-bys,  
2 oftentimes there was marijuana that you smoked in your car  
3 when you were driving it around?

4 A No.

5 Q Never?

6 A There were like a handful of times, but, no, I  
7 wouldn't allow anybody to smoke in my car.

8 Q Well, you said there were a handful of times that  
9 marijuana would be smoked?

10 A Yes.

11 Q But you wouldn't allow anyone to smoke marijuana.  
12 Which one was it?

13 A It was a handful of times; not all the time.

14 Q So that it was not accurate, because you did allow  
15 them to smoke marijuana in the car?

16 A Yes.

17 Q There were times that was going on when you had your  
18 daughter in the car?

19 A No. Never.

20 Q No.

21 How about that -- did you post a picture of your  
22 daughter on your Facebook page holding a bottle of beer?

23 A Holding a bottle of beer?

24 Q Yes.

25 A Maybe I did; maybe I didn't. I don't remember.

**C. Santos - Cross/Macedonio**

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1 Q Certainly you would have remembered if you posted it  
2 on your Facebook page?

3 A I don't remember. I can't answer your question  
4 because I can't -- I don't remember.

5 Q But it certainly could have happened, right?

6 A Like I said, I don't remember.

7 Q You were a partier --

8 MR. DURHAM: Objection.

9 THE COURT: Sustained.

10 BY MS. MACEDONIO:

11 Q Did you participate smoking marijuana with other  
12 people?

13 A I didn't smoke marijuana because I had probation.

14 Q Okay. You testified yesterday that you participated  
15 in a murder, numerous drive-bys, assaults and all sorts of  
16 other crimes while you were on probation.

17 A Uh-huh.

18 Q But you wouldn't dare to smoke marijuana when you  
19 were on probation. Is that your testimony, Ms. Santos?

20 A Because I was getting drug-tested.

21 Q I see. So you weren't worried about all those other  
22 crimes; you were only worried about smoking marijuana?

23 A Yes.

24 Q And you let people smoke marijuana in your car; is  
25 that correct?

**C. Santos - Cross/Macedonio**

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1 A A few times.

2 Q Just a few times?

3 A Yes.

4 Q Yesterday, you testified to some of the crimes you  
5 committed while on probation, but we didn't get to the  
6 robbery in the car.

7 A Yes.

8 Q That was a robbery that you participated in because  
9 you needed money, right?

10 A I didn't personally need the money: Somebody else  
11 needed the money.

12 Q But you participated in that?

13 A I was there, yes.

14 Q Did you drive the people there?

15 A No, I did not.

16 Q Okay. Was your daughter present when that happened?

17 A No, she was not.

18 Q She was only present when you committed some of these  
19 crimes?

20 A Yes.

21 Q So, for example, when you testified that -- when you  
22 picked up Cruzito, Gringo and Zorro -- do you remember  
23 your testimony about that?

24 A Yes.

25 Q You testified that you were scared because you didn't

**C. Santos - Cross/Macedonio**

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1 know what was going on?

2 A Yes.

3 Q And you were so scared that you put your daughter in  
4 the car. Do you remember that?

5 A I brought my daughter in the car.

6 Q Even though you were scared, right?

7 And when you found out that these three men had  
8 just killed two people, you continued to put your daughter  
9 in the car and drive around with them, didn't you?

10 A Yes.

11 Q So, for example, when you drove to the hotel, was  
12 your daughter with you?

13 A Yes, she was.

14 Q When you drove to the Bronx to McDonalds, was your  
15 daughter with you?

16 A Yes.

17 Q And you did that even though you testified that you  
18 were scared, right?

19 A Yes.

20 Q Is that one of those things that a mother would do  
21 anything for her child?

22 MR. DURHAM: Objection.

23 THE COURT: Sustained.

24 BY MS. MACEDONIO:

25 Q During the course of you driving Cruzito, Gringo and

**C. Santos - Cross/Macedonio**

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1 Zorro around after the homicide of February of 2010, was  
2 there a time when you heard Cruzito speaking to his  
3 girlfriend Jennifer?

4 A Yes.

5 Q Did you here him say, Jennifer, I did this for you?

6 A Yes, I did.

7 Q Was it your understanding that Cruzito had done it  
8 for Jennifer because Vanessa had sent people to Cruzito's  
9 house on two occasions to beat him up?

10 A Yes.

11 Q And did you tell the agents in this case that Zorro  
12 made the plan for Cruzito to kill Vanessa?

13 A Yes.

14 Q And did either Zorro or Gringo tell you that they  
15 participated in those homicides for Cruzito?

16 A Yes.

17 Q Now, you testified that after Baby Blue was killed on  
18 March 17th of 2010, that you traveled to Universal,  
19 correct?

20 A Yes.

21 Q Before that date, you participated in other clique  
22 meetings, right?

23 A For the Coronados, yes.

24 Q Did you actually participate in those meetings?

25 A I was there. I was present at the meetings.

**C. Santos - Cross/Macedonio**

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1 Q You were allowed in, but you weren't speaking. Fair  
2 enough?

3 A Yes.

4 Q But you were listening to what was going on?

5 A Yes.

6 Q And if things were being planned, you heard it,  
7 right?

8 A Yes.

9 Q And you traveled to Universal, and then they told you  
10 you had to leave?

11 A Yes.

12 Q Has anyone ever told you what racketeering is?

13 A I'm sorry, what was that?

14 Q Racketeering?

15 A I have an idea what it is.

16 Q What is your idea what racketeering is?

17 A Well, I know it is one or more persons contributing  
18 to a crime, but I'm not sure if I'm correct or not.

19 Q How about racketeering conspiracy? Do you know what  
20 that is?

21 A No.

22 Q Has anyone ever told you that your participation in  
23 all of these crimes could subject you to prosecution for  
24 racketeering or a racketeering conspiracy?

25 A No.



**C. Santos - Cross/Macedonio**

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1 Q Not those crimes?

2 A No.

3 Q Now, in the Universal that you attended, you  
4 testified that part of the issue or part of the agenda was  
5 that there was going to be green lights put out because of  
6 Baby Blue's murder, right?

7 A Yes.

8 Q That is because Baby Blue's murder wasn't sanctioned;  
9 is that correct?

10 A Yes.

11 Q So let's switch gears now and talk about your  
12 progress with the FBI.

13 You testified you started meeting with the FBI  
14 in March, or on March 23, 2010, right?

15 A Yes.

16 Q And you said that the reason why you did that was  
17 because you were either going to go to jail or stay on the  
18 street, which would be problematic for you and your  
19 daughter, right?

20 A Yes.

21 Q And you had testified yesterday that -- you  
22 repeatedly testified yesterday you wanted to leave  
23 sometime?

24 A Yes.

25 Q In fact, I think it was the day before that you said

**C. Santos - Cross/Macedonio**

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1 that Vanessa and Diego's murders had really gotten to you,  
2 right?

3 A Yes.

4 Q But their murders occurred in February of 2010,  
5 right?

6 A Yes.

7 Q Between the time of February 5, 2010, and March 23,  
8 2010, you committed a laundry list of crimes, right?

9 A Yes.

10 Q We don't have to go through them again because we did  
11 it yesterday.

12 It's fair to say that you continued to  
13 participate in MS-13 crimes with full force, right?

14 A Yes.

15 Q Even though you said you wanted out?

16 A Yes.

17 Q Right?

18 A Yes.

19 Q And even though you said that it was those homicides  
20 that really got to you, you helped those three individuals  
21 flee the country, didn't you?

22 A Yes.

23 Q And then you sent them money?

24 A Yes.

25 Q And you continued to communicate with their parents?

**C. Santos - Cross/Macedonio**

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1 A Yes.

2 Q Calling you, giving you messages, called them back.

3 Made sure they were up to date, didn't you?

4 A Yes.

5 Q Even though you testified that that was a turning  
6 event, that's not really what happened, was it?

7 A That was the turning event. If they were capable to  
8 do that to Diego and Vanessa, yes.

9 Q But even though -- when Baby Blue was killed in the  
10 middle of March, you got yourself tattooed, didn't you?

11 A Yes.

12 Q And you were talking about becoming a full-fledged  
13 member, weren't you?

14 A Yes.

15 Q So you didn't get out after junior high school,  
16 right?

17 A Yes.

18 Q Didn't get out when your daughter was born?

19 A No.

20 Q Didn't get out when your father's daughter [sic] was  
21 in jail?

22 MR. DURHAM: Objection.

23 THE COURT: Overruled.

24 BY MS. MACEDONIO:

25 Q Right?

**C. Santos - Cross/Macedonio**

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1 A Yes.

2 Q Didn't get out when Vanessa and Diego were killed?

3 A Yes.

4 Q Didn't get out when David Sandler was killed?

5 A No.

6 Q Didn't get out when Baby Blue was killed?

7 A Yes.

8 Q You only got out when you were threatened with jail,  
9 correct?

10 A Yes.

11 Q Now, in September of 2011, you went into the Witness  
12 Protection Program; is that correct?

13 A Yes.

14 Q And with your participation in the Witness Protection  
15 Program, they give you, I think you said, \$1430 a month,  
16 right?

17 A Yes.

18 Q And you get that every month, and you get that for  
19 two years, right?

20 A For 18 months.

21 Q For 18 months.

22 So roughly about \$28,000 you are going to get  
23 for your participation in the program?

24 A No.

25 Q Ever pay taxes on the money?

**C. Santos - Cross/Macedonio**

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1 A No, I don't.

2 Q So you get that money tax-free?

3 A Yes.

4 Q Before your testimony in this case here today, have  
5 you ever testified in any other case?

6 A No.

7 Q And other than talking to the Government, what else  
8 have you done for the Government?

9 A I've talked to them and I've given them whatever they  
10 asked for.

11 Q I think you testified that you may have recorded some  
12 conversations with them?

13 A Yes.

14 Q Phone conversations?

15 A Yes.

16 Q Ever wear a body wire?

17 A Yes.

18 Q How many times did you do that?

19 A I don't know how many times, but it was a few times,  
20 couple of times.

21 Q Two or three times?

22 A Yes.

23 Q You talked with the Government two or three times;  
24 you had some telephone conversations?

25 A Yes.

**C. Santos - Cross/Macedonio**

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1 Q And for that you get about \$28,000 tax-free from the  
2 United States government?

3 A Yes.

4 Q And that's just for witness protection, right?

5 A That money is for food, rent, for stuff like that.

6 Q But it's for you?

7 A Yes.

8 Q I'm not getting it; you're getting it?

9 A I understand --

10 MR. DURHAM: Objection.

11 THE COURT: Sustained.

12 BY MS. MACEDONIO:

13 Q You are getting the money, right?

14 A Yes.

15 Q It's being sent to you in a check or some form?

16 A Yes.

17 Q And you do with it whatever you want?

18 A For the things I need, yes.

19 Q You use it for whatever you want. No one is telling  
20 you how to spend that money, are they, Ms. Santos?

21 A No.

22 Q When you went into the Witness Protection Program,  
23 did the Marshals Service help you get set up?

24 A Yes.

25 Q Found you a place to live?

**C. Santos - Cross/Macedonio**

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- 1 A Yes.
- 2 Q Did they get you a new car?
- 3 A Yes.
- 4 Q They are helping you go to school?
- 5 A Not at the moment.
- 6 Q Help you get a job?
- 7 A Yes -- no, I got a job on my own.
- 8 Q But they got you a new car?
- 9 A Yes.
- 10 Q Fair to say it is nicer than before?
- 11 A About the same.
- 12 Q How about your car? Nicer than you had before?
- 13 A It's a couple years younger.
- 14 Q But it's better than the one you had before?
- 15 A Yes.
- 16 Q Before you went into the Witness Protection Program,
- 17 how were you supporting yourself?
- 18 A I was working. I had two jobs.
- 19 Q When you started to cooperate, when you were living
- 20 in the hotel --
- 21 A Yes.
- 22 Q -- that was the FBI that was paying for that?
- 23 A Yes.
- 24 Q And are you aware that between March of 2010 and
- 25 September of 2011, when you went into the Witness

**C. Santos - Cross/Macedonio**

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1 Protection Program, that the FBI spent \$97,700 putting you  
2 up in a hotel, almost \$100,000 for your personal expenses?  
3 Are you aware of that?

4 MR. DURHAM: Objection.

5 If I may have a moment with counsel.

6 THE COURT: Yes.

7 (Counsel confer.)

8 BY MS. MACEDONIO:

9 Q Let me clarify my question.

10 Are you aware that the FBI spent close to  
11 \$100,000 on costs that were associated with you, not just  
12 the hotel but costs that were associated with you?

13 A No, I wasn't aware of that much.

14 Q But the FBI paid for the hotel during that whole time  
15 period?

16 A Yes.

17 Q Paid for your groceries during that whole time  
18 period?

19 A Yes.

20 Q Paying for gas?

21 A No.

22 Q How did you pay for gas?

23 A Mom.

24 Q How about car insurance?

25 A Mom.



**C. Santos - Cross/Macedonio**

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1 Q Well, sitting in the hotel, paying for your  
2 groceries, and you are not working anymore, right?

3 A No.

4 Q So you are there under their protection, right?

5 A Yes.

6 Q And you, because you are so afraid, decide that it  
7 would be wise to start seeing an inmate at the Queens  
8 jail; is that correct?

9 A Yes.

10 Q Who were you seeing at the Queens jail?

11 A Leonel.

12 Q What is his last name?

13 A Sanchez.

14 Q Who is Leonel Sanchez?

15 A He was a friend back before, when I first moved to  
16 Brentwood. I first met him, and then he went to jail.  
17 And then we kept contact here and there with other  
18 friends. And once I moved, we started talking again.

19 Q He was a gang member, wasn't he?

20 A Yes, he was.

21 Q So even though you testified that you had to be put  
22 up in a hotel for 18 months because you were so terrified  
23 what was going to happen to you, you took it upon yourself  
24 to start visiting another gang member who was already  
25 incarcerated, didn't you?

**C. Santos - Cross/Rantala**

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1 A Yes.

2 Q And you did that on multiple occasions, didn't you?

3 A Yes.

4 Q And you brought his daughter to the jail to visit  
5 Leone1 Sanchez?

6 A Yes.

7 Q And even though you testified that you were so afraid  
8 someone was going to kill you, you could have very easily  
9 run into other members of MS-13 outside the jail visiting  
10 their loved ones, right?

11 MR. DURHAM: Objection.

12 THE COURT: Overruled.

13 A Yes.

14 BY MS. MACEDONIO:

15 Q But you went anyway?

16 A Yes.

17 Q And you took your daughter and exposed her to that?

18 A Yes.

19 Q Because you were so scared, right?

20 A Yes.

21 MS. MACEDONIO: I have no further questions of  
22 this witness.

23 THE COURT: Ms. Rantala?

24 MS. RANTALA: Yes, your Honor, briefly.

25 CROSS-EXAMINATION

**C. Santos - Cross/Rantala**

955

1 BY MS. RANTALA:

2 Q Good morning.

3 A Good morning.

4 Q Now, you had testified yesterday or the day before,  
5 I'm not sure which, regarding statements that you made to  
6 the Suffolk County Police Department regarding an alleged  
7 robbery, right?

8 A Yes.

9 Q And you remember that you had signed a statement,  
10 right?

11 A Yes.

12 Q That was Defendant's Exhibit Martinez A?

13 A Yes.

14 Q All right. And that was dated March 14th of '08?

15 A Yes.

16 Q Now, you are aware that you actually took a plea  
17 regarding making that false statement, right?

18 A Yes.

19 Q And also, you -- also, that was a false statement  
20 misdemeanor?

21 A Yes.

22 Q And you pled guilty to a perjury count, right?

23 A Yes.

24 Q That is Public Law 21005?

25 A I don't know.

**C. Santos - Cross/Rantala**

956

1 Q But it was a perjury count in the third degree?

2 A Yes.

3 Q You are aware, are you not, that perjury -- a person  
4 is guilty of perjury in the third degree when he or she  
5 swears falsely, right?

6 A Yes.

7 Q You took an oath to tell the truth when you wrote  
8 that statement on March 14th of '08?

9 A Yes.

10 Q And you wrote, basically, a statement about a false  
11 robbery, right?

12 A Yes.

13 Q Do you remember taking an oath to tell the truth here  
14 in court?

15 A Yes.

16 Q To tell the truth yesterday, today, and the day  
17 before yesterday?

18 A Yes.

19 Q But you had no respect for telling the truth on  
20 March 14th of 2008, did you?

21 MR. DURHAM: Objection.

22 THE COURT: Sustained as to form.

23 BY MS. RANTALA:

24 Q Did you tell the truth in that statement on  
25 March 14th of 2008?

**C. Santos - Cross/Rantala**

957

1 A No, I did not.

2 Q Now, going through the David Sandler murder --

3 A Yes.

4 Q -- you actually discussed that particular incident  
5 with several members of the MS-13 afterwards?

6 A Afterwards?

7 Q Yes. Including Jimmy Sosa, known as "Junior"?

8 A Yes.

9 Q You came to understand at some point that Junior and  
10 Perdido were the shooters, did you not?

11 A Yes.

12 Q And you told that to the FBI agents?

13 A Yes.

14 Q You eventually told that more than once to the FBI  
15 agents, didn't you?

16 A Yes.

17 Q You stated in your direct examination that Carlos  
18 Ortega -- that you would talked to him afterwards, right?

19 A Yes.

20 Q And he had said something that he's hot with the cops  
21 and scared of one of them would snitch, and cops would be  
22 looking for him, something to that effect?

23 A Yes.

24 Q Carlos Ortega never actually specifically said he had  
25 anything to do with this?

**C. Santos - Cross/Rantala**

958

1 A No, he did not.

2 Q He actually denied his involvement in that phone  
3 conversation?

4 A He didn't deny it, but he didn't say he did it  
5 either.

6 Q We don't have the benefit of that particular  
7 telephone conversation being recorded, do we?

8 MR. DURHAM: Objection.

9 THE COURT: Sustained as to form.

10 BY MS. RANTALA:

11 Q Is that telephone conversation recorded?

12 A No.

13 Q So the jury can't hear it then?

14 A No.

15 Q So he could have said that he denied vehemently his  
16 involvement in having to do with anything like that,  
17 correct?

18 A Yes.

19 Q You are here basically testifying to help yourself,  
20 correct?

21 A Yes.

22 Q You got a new life from the Government?

23 A Yes.

24 Q You are spending time with your daughter?

25 A Yes.

**C. Santos - Cross/Rantala**

959

1 Q You have basically gotten money from the Government?

2 A Yes.

3 Q Protection from the Government?

4 A Yes.

5 Q A better car, apparently, as we just learned, from  
6 the Government?

7 A Yes.

8 Q And an ability to take care of your daughter from the  
9 Government?

10 A I'm sorry, what was that?

11 Q You received the ability to take care of your  
12 daughter from the Government?

13 A Yes.

14 Q You are not in jail?

15 A Yes.

16 Q They told you you are not going to jail?

17 A Yes.

18 Q Yes?

19 And you would do anything for your child,  
20 wouldn't you?

21 A Yes.

22 Q Including lie today, yesterday, and the day before;  
23 isn't that true?

24 MR. DURHAM: Objection.

25 THE COURT: Overruled.

**C. Santos - Redirect/Durham**

960

1                   You can answer.

2       A       No.

3       BY MS. MACEDONIO:

4       Q       But you admitted to the jury on numerous occasions  
5       that you lied in your police statements, did you not?

6       A       Yes, I did.

7                   MS. RANTALA: I have nothing further.

8                   THE COURT: Redirect?

9       REDIRECT EXAMINATION

10      BY MR. DURHAM:

11      Q       Good morning, Ms. Santos.

12      A       Good morning.

13      Q       Yesterday, Ms. Macedonio, and again today,  
14      Ms. Rantala, asked you a number of questions about your  
15      employment in the mall.

16      A       Yes.

17      Q       And you were charged with crimes in connection with  
18      that?

19      A       Yes.

20      Q       Did you plead guilty to those crimes?

21      A       Yes, I did.

22      Q       You were also asked questions about a drive-by  
23      shooting carried out by Juan Reyes. That was your  
24      boyfriend at the time?

25      A       Yes.



**C. Santos - Redirect/Durham**

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1 Q Who else was involved?

2 A Guerillero, Sonic, Cura, and Pajaro Loco.

3 Q Were all those individuals members of the MS-13?

4 A Yes, they were.

5 Q You were also asked some questions about January of  
6 2010 when Sparky was arrested.

7 A Yes.

8 Q You said you paid some money for the gun because he  
9 was in a bad position?

10 A Yes.

11 Q What was that bad position?

12 A He was in jail.

13 Q You also said you paid money because you didn't want  
14 him to be in a worse position?

15 A Yes.

16 Q What was the worse position?

17 A Either -- he would have to pay one way or the other.  
18 Either he'd be hurt in jail, or they would try to get  
19 money from one of his family members.

20 Q When you say "they," who are you referring to?

21 A The gang.

22 Q You were also asked questions whether or not you had  
23 a detailed discussion with Sparky afterwards. Do you  
24 remember that?

25 A Yes.

**C. Santos - Redirect/Durham**

962

1 Q Did you?

2 A I didn't have a detailed discussion, because he was  
3 in jail.

4 Q Are those jail calls recorded?

5 A Yes, they are.

6 Q Now, you were also asked some questions about a  
7 murder that happened in May of 2009. Is that the murder  
8 of Dexter Acheampong?

9 A Yes.

10 Q That happened in Central Islip?

11 A Yes.

12 Q Did that happen in Central Islip?

13 A Yes.

14 Q When that murder happened, were you driving the car?

15 A I was in the car.

16 Q Were you in the car when the people carried out the  
17 murder?

18 A No.

19 Q Did you give the order to shoot that person?

20 A No, I did not

21 A Did you shoot that person?

22 A No, I did not

23 Q Who did?

24 A Diablito did.

25 Q What clique did Diablito belong to?

**C. Santos - Redirect/Durham**

963

1 A The Coronados clique.

2 Q What status did he have with the clique?

3 A He was the main head of the clique.

4 Q Was he arrested of that murder to your knowledge?

5 A Yes.

6 Q Was he convicted of that murder?

7 A I'm not sure.

8 Q This morning, Ms. Macedonio asked some questions  
9 about a robbery of Fajita's car?

10 A Yes.

11 Q Were you there for that robbery?

12 A Yes, I was.

13 Q Who carried out the robbery?

14 A Zorro and Boxer.

15 MS. MACEDONIO: May we have a side bar?

16 (Whereupon, at this time the following took  
17 place at the sidebar.)

18 MS. MACEDONIO: We've been given no formal  
19 404(b) letter in this case. I understand there are other  
20 crimes my client may have participated in, but the  
21 Government has elected not to seek to introduce those  
22 crimes.

23 When I questioned her about this particular  
24 incident, I did so in a very limited fashion, simply  
25 asking her if her daughter was present at the scene. I

**C. Santos - Redirect/Durham**

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1 didn't go into it in any more detail than the Government  
2 did on their direct examination, in such a way to open the  
3 door as to now bring in my client's involvement.

4 MR. DURHAM: Ms. Macedonio crossed this witness  
5 extensively about the fact she was not charged with  
6 certain crimes she committed.

7 The defendant committed this crime, and he was  
8 not charged with it. So when everyone commits a crime,  
9 the Government doesn't charge him.

10 Additionally, your Honor, robbery is one of the  
11 racketeering acts alleged in the indictment.

12 THE COURT: This is not 404(b), this is robbery,  
13 which is part of the gang. The fact they didn't charge it  
14 doesn't mean they don't have to elicit it.

15 Are you suggesting that she knew he was involved  
16 in that?

17 So I think apart from opening the door issue,  
18 they are permitted to prove uncharged racketeering acts as  
19 well as his involvement in the enterprise.

20 What is her basis for that?

21 MR. DURHAM: She was present for the robbery,  
22 was the question. So I'm saying, who else was present?

23 THE COURT: Are you going to move on now?

24 MR. DURHAM: Yes. I just can't remember if she  
25 answered that question.

**C. Santos - Redirect/Durham**

965

1 MS. MACEDONIO: It's in.

2 (End of sidebar conference.)

3 BY MR. DURHAM:

4 Q To be clear, this defendant was present for this  
5 robbery (indicating)?

6 MS. MACEDONIO: Objection.

7 THE COURT: Asked and answered.

8 BY MR. DURHAM:

9 Q And this morning, Ms. Rantala asked you questions  
10 about the David Sandler murder. Do you remember that?

11 A Yes.

12 Q When you spoke to defendant Carlos Ortega, known as  
13 "Silent," did he deny he was -- being involved?

14 A He didn't deny it.

15 Q Specifically what did he say he was worried about?

16 A He was worried about Perdido and Junior.

17 Q As you understood it, why was he worried about those  
18 three people?

19 A He was worried because he was scared they were going  
20 to snitch on him.

21 Q I'm sorry?

22 A That they were going to snitch.

23 Q What does that mean?

24 A That they would drag him out, tell them what would  
25 happen.

**C. Santos - Redirect/Durham**

966

1 Q You understood those three people were also involved  
2 in the David Sandler murder?

3 A Yes.

4 Q Now, you were also asked some questions by  
5 Ms. Macedonio this morning about Leonel Sanchez.

6 A Yes.

7 Q Was he at one point a member of the MS-13?

8 A Yes, at one point.

9 Q And at the time you were visiting him in jail, was he  
10 a still a member of the gang?

11 A No, he was not.

12 Q Why not?

13 A He was cooperating with the police. He was out of  
14 the gang.

15 Q He was out of the gang?

16 A Yes.

17 Q Why was he out of the gang?

18 A Because he wanted to cooperate.

19 Q To your knowledge, did he ever testify in this  
20 courthouse?

21 A Yes.

22 Q To your knowledge, does he also have a green light?

23 MS. MACEDONIO: Objection.

24 THE COURT: Overruled.

25 BY MR. DURHAM:

**C. Santos - Redirect/Durham**

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1 Q And Ms. Santos, what was Mr. Sanchez prosecuted for?

2 A A murder.

3 Q Now, you were also asked questions that as late as  
4 March of 2010, you were considering joining the MS-13.

5 A Yes.

6 Q Did you ever join the MS-13?

7 A No, I did not.

8 Q Were you ever a leader in the MS-13?

9 A No, I was not.

10 Q Looking around this courtroom, do you see any leaders  
11 from the MS-13?

12 A Yes, I do.

13 Q Where?

14 A Right there.

15 Q Defense table?

16 A Yes.

17 Q Now, you were also asked question about whether or  
18 not you would come into this court and lie.

19 Do you understand what would happen if you came  
20 in and lied?

21 A I would go to jail.

22 MR. DURHAM: No further questions.

23 THE COURT: Anything further?

24 MS. MACEDONIO: May I have a moment, Judge?

25 (Counsel confer.)

**C. Santos - Redirect/Durham**

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1 MS. RANTALA: Your Honor, may we approach  
2 sidebar?

3 (Whereupon, at this time the following took  
4 place at the sidebar.)

5 MS. RANTALA: I didn't know how else to do this.  
6 My client wants to have an interpreter at this juncture.

7 THE COURT: Before the witness is excused?

8 MS. RANTALA: Yes.

9 THE COURT: Why don't we -- do you want to do it  
10 outside the presence of the jury or have the interpreter  
11 go over with you for a moment if you want. What do you  
12 want?

13 MS. RANTALA: Probably be better outside the  
14 jury, because if somebody understands Spanish and they  
15 talk loudly, so...

16 (End of sidebar conference.)

17 THE COURT: We'll take a short break. Don't go  
18 anywhere. Just a short break.

19 (Whereupon, a recess was taken.)

20 THE COURT: Please be seated.

21 Please take the witness out.

22 (Witness exits the courtroom.)

23 (Ms. Rantala confers with the defendant with the  
24 aid of the interpreter.)

25 MS. RANTALA: Thank you, your Honor.



**C. Santos - Redirect/Durham**

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1 THE COURT: All right. Do you have other  
2 questions for the witness?

3 MS. MACEDONIO: A few, your Honor.

4 THE COURT: Who is the next witness?

5 MR. TIERNEY: Detective Ralph Rivera. He's  
6 outside.

7 THE COURT: Give him the warning now so we don't  
8 have to take another break.

9 MR. TIERNEY: Thank you, your Honor.

10 (Detective Rivera enters.)

11 THE COURT: I just want to bring you in now and  
12 give you a warning. All the witnesses are testifying  
13 regarding the Torres-Argueta murders. I've made the  
14 determination that the jury is not to know the age of  
15 Diego Torres, and they are not to know that he's a child  
16 or a boy. They are not to know that in any fashion.

17 So on the stand, when you were testifying, when  
18 you are referring to him, you are not to reveal that in  
19 any manner, that he's a male, a youth, or anything like  
20 that.

21 Anything else?

22 MR. DURHAM: I intentionally didn't get into  
23 Argueta-Torres murders --

24 THE COURT: In response to Ms. Macedonio's  
25 questions, she did say something to the effect -- I don't

**C. Santos - Redirect/Durham**

970

1 know the exact words, but something to the effect that if  
2 they can do that to them, they can do that to my son,  
3 something along the lines. But it was in direct  
4 reference, given my knowledge of the whole situation, that  
5 it was discussed at sidebar.

6 It was not intentional by the witness, and I  
7 don't think she violated my ruling in response to a number  
8 of questions with regard to that murder, those murders,  
9 affecting her. And I would prefer she not say that, but  
10 it was in response to the questions. And I don't think  
11 any relief is warranted with respect to that.

12 MR. DURHAM: I didn't go into it in my redirect  
13 for that reason. So because I didn't do that and there  
14 will not be recross on that matter, if the Court deems it  
15 appropriate, we'll have to rebrief the witness. Rather be  
16 safe than sorry.

17 THE COURT: There was a whole series of  
18 questions about that, and it was unfortunate, but it is  
19 what it is. But you will not ask any additional questions  
20 on that?

21 MS. MACEDONIO: No, I am not.

22 THE COURT: Okay. Let's bring her back in.

23 (Witness Santos resumes the stand.)

24 THE COURT: Bring in the jury.

25 (Whereupon, the jury at this time enters the

**C. Santos - Recross/Macedonio**

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1 courtroom.)

2 THE COURT: Please be seated.

3 Any recross?

4 MS. MACEDONIO: Thank you, Judge.

5 RE CROSS-EXAMINATION

6 BY MS. MACEDONIO:

7 Q You testified on redirect by Mr. Durham -- he asked  
8 you questions about Leonel Sanchez. Do you remember that?

9 A Yes.

10 Q You testified that Leonel Sanchez, when you were  
11 visiting him, was no longer a member of the gang?

12 A Yes.

13 Q But he was a member of the gang for quite some time,  
14 was he not?

15 A Yes.

16 Q Just because he was cooperating with the Government  
17 doesn't mean that he didn't commit crimes?

18 A Yes.

19 Q And he committed murders?

20 A Yes.

21 Q Do you know if Mr. Sanchez participated in that  
22 homicide directly?

23 A I know he was present at the time, but I don't know  
24 if he participated in a murder.

25 Q But he pled guilty to that?

**C. Santos - Recross/Macedonio**

972

1 A Yes.

2 Q So he accepted responsible for that?

3 A Yes.

4 Q So he was indeed guilty of murder at some point?

5 A Yes.

6 Q And are you aware that Mr. Sanchez was facing a  
7 mandatory life sentence for that?

8 A I don't know.

9 Q You don't know?

10 A No.

11 Q Do you know what his ultimate sentence was?

12 A No.

13 Q Okay.

14 You testified on redirect that if you lie, that  
15 you are going to go to jail, right?

16 A Yes.

17 Q Has anybody told you how long you would go to jail  
18 for?

19 A No.

20 Q And you've never been charged for a crime?

21 A No.

22 Q So there is no way to determine if you'd go to jail  
23 or for how long?

24 A Right.

25 Q The very people that are going to decide if you go to

**C. Santos - Recross/Macedonio**

973

1 jail are the same people that you lied to when you were  
2 first arrested, right?

3 MR. DURHAM: Objection.

4 BY MS. MACEDONIO:

5 Q You lied to the FBI -- excuse me. I'll rephrase the  
6 question.

7 I'll withdraw the other question?

8 When you were first approached by the FBI in  
9 March of 2010, you lied to them, right?

10 A Yes.

11 Q And you lied repeatedly to them for hours, right?

12 A Yes.

13 Q And now you are saying if you get on the stand and  
14 lie, that you will go to jail, right?

15 A Yes.

16 Q Who decides if you lie here today?

17 A Can you rephrase the question for me?

18 Q Would it be the federal government that decides  
19 whether or not you are lying?

20 A Yes.

21 Q Okay. And it would be them to decide whether or not  
22 you are going to face a charge, right?

23 A Yes.

24 MS. MACEDONIO: Thank you. I have no further  
25 questions.

**C. Santos - Further Redirect/Durham**

974

1 MS. RANTALA: Just briefly, your Honor.

2 RECROSS-EXAMINATION

3 BY MS. RANTALA:

4 Q Going back to this telephone conversation between  
5 Carlos Ortega and yourself.

6 A Yes.

7 Q Perdido wasn't even in jail when you had that  
8 conversation, was he?

9 A No.

10 Q And you never testified that Carlos Ortega was any  
11 kind of a leader, did you?

12 A No.

13 Q So when you pointed over at the table here, you  
14 weren't referring to Carlos Ortega?

15 A No, I wasn't.

16 MS. RANTALA: Nothing further.

17

18 FURTHER REDIRECT EXAMINATION

19 BY MR. DURHAM:

20 Q Ms. Macedonio asked questions about the first time  
21 you met with the FBI.

22 A Yes, I did.

23 Q You lied to them initially?

24 A Yes, I did.

25 Q The same night, did you tell them where Demente was?

**C. Santos - Further Redirect/Durham**

975

1 A Yes, I did.

2 Q You showed them the house where Demente was?

3 A Yes.

4 Q After the FBI arrested him, did you identify him?

5 A Yes, I did.

6 Q What was he arrested for?

7 A He was arrested for murder.

8 MR. DURHAM: No further questions.

9 MS. MACEDONIO: I have no further questions.

10 MS. RANTALA: No further questions, your Honor.

11 THE COURT: You may step down.

12 Next witness.

13 MR. TIERNEY: Thank you, your Honor.

14 The Government calls Detective Ralph Rivera.

15 THE COURT: Detective Rivera, please raise your  
16 right hand.

17 **R A L P H R I V E R A,**

18 called as a witness, having been first  
19 duly sworn, was examined and testified  
20 as follows:

21 THE COURT: Please be seated.

22 State your name, and spell your last name for  
23 the record.

24 THE WITNESS: Ralph Rivera, R-I-V-E-R-A.

25 THE COURT: Detective Rivera, please move close

**Rivera - Direct/Tierney**

976

1 to the mike and keep your voice up.

2 THE WITNESS: Yes, sir.

3 MR. TIERNEY: May I inquire?

4 THE COURT: Yes.

5 DIRECT EXAMINATION

6 BY MR. TIERNEY:

7 Q By whom are you employed?

8 A Suffolk County Police Department.

9 Q For how long?

10 A 24 and a half years.

11 Q Where are you currently assigned?

12 A The homicide squad.

13 Q How long have you been assigned to the homicide  
14 squad?

15 A For eight years, seven consecutive. I went off for a  
16 year and came back in January of 2012.

17 Q What are your duties and responsibilities with the  
18 homicide bureau?

19 A I investigate deaths, suicides, unattended deaths.

20 Q These homicides and other deaths, where do they  
21 occur?

22 A Suffolk County.

23 Q Do you speak Spanish?

24 A I do.

25 Q How is it that you came to speak Spanish?



**Rivera - Direct/Tierney**

977

1 A I learned to speak Spanish at home, from my parents,  
2 who are both natives of Puerto Rico.

3 Q Do you speak Spanish on the job?

4 A I do.

5 Q And during the course of your employment with the  
6 Suffolk County Police Department for the last 24 years,  
7 have you taken statements from Spanish-speaking witnesses?

8 A Yes, I have.

9 Q And have you also taken statements from  
10 Spanish-speaking defendants while working for the Suffolk  
11 County PD?

12 A Yes, I have.

13 Q Approximately how many times?

14 A Hundreds.

15 Q And through the course of your employment with the  
16 Suffolk County Police Department, have you advised  
17 Spanish-speaking defendants of their rights in Spanish?

18 A Yes, I have.

19 Q Again, approximately how many times?

20 A Hundreds.

21 Q I'm going to call your attention to March 17th of  
22 2010. Were you called into work on that day?

23 A Yes, I was.

24 Q When were you originally scheduled to work?

25 A I was originally scheduled to work 5 p.m. to 1 a.m.

Rivera - Direct/Tierney

978

1 tour of duty.

2 Q That is 5 p.m. on the 17th to the 18th?

3 A Yes.

4 Q What time were you called in?

5 A 10 a.m.

6 Q For what reason?

7 A I was called in to investigate a murder that had  
8 occurred in Suffolk County, in Central Islip, on  
9 February 5, 2010.

10 Q And who -- the victims of that murder, were they  
11 Diego Torres and Vanessa Argueta?

12 A Yes.

13 Q Were you assigned to the investigation of that case  
14 prior to March 17th?

15 A No, I was not.

16 Q For what purpose were you called to be in on  
17 March 17th?

18 A I was called in because the NYPD had a suspect in  
19 custody who may have had information relative to our case  
20 in Suffolk County.

21 Q And in addition to yourself, were any other personnel  
22 in the Suffolk County Police Department called in?

23 A Yes. Detective Robert Chase.

24 Q What, if any, connections did Detective Chase have  
25 with regard to the Argueta and Torres murders?

**Rivera - Direct/Tierney**

979

1 A He was the scene detective where it occurred.

2 Q In other words, he was the detective from the  
3 homicide bureau assigned to respond to the homicide scene  
4 in Central Islip regarding Argueta and Torres?

5 A Yes.

6 Q For what reason were you called in?

7 A Because I spoke Spanish, and they believed that the  
8 suspect may have spoken Spanish.

9 Q Why was -- Detective Chase, does he speak Spanish?

10 A No, he does not.

11 Q When you were called in, were you told where you were  
12 going to be speaking with this suspect?

13 A Yes. At the 101 Precinct in Far Rockaway.

14 Q After being called into work, what did you do?

15 A We responded to the 101 Precinct.

16 Q Who is "we"?

17 A Myself and Detective Chase.

18 Q And what time did you get there?

19 A At 12:40 p.m.

20 Q And that is 12:40 p.m. on March 17th?

21 A Correct.

22 Q What did you do upon your arrival to the 101 squad?

23 A We met with some of the detectives from Nassau County  
24 and the NYPD.

25 Q Okay. And for what reason were the Nassau County

Rivera - Direct/Tierney

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1 Police Department there?

2 MS. MACEDONIO: Objection.

3 THE COURT: Sustained.

4 BY MR. TIERNEY:

5 Q And in addition -- you indicated that you spoke with  
6 the NYPD and personnel from the Nassau County Police  
7 Department.

8 A Yes, sir.

9 Q In addition to that, did you speak with any  
10 witnesses?

11 A Yes.

12 Q Who did you speak with?

13 A Spoke to a Diego Marroquin, I believe.

14 Q And when you and Detective Chase responded to the 101  
15 Precinct, did you have any photo arrays with you?

16 A Yes, we did.

17 Q What is a photo array?

18 A A photo array is a document that has six photos on  
19 it, photo of the suspect and five fillers, that we use to  
20 try and identify one of the individuals who we suspect was  
21 involved in a crime.

22 Q And you indicated you had two photo arrays?

23 A Yes.

24 Q One for each of a particular suspect?

25 A Yes.

Rivera - Direct/Tierney

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1 Q Who were the suspects in each of the photo arrays you  
2 had with you?

3 A Photo arrays of Cruzito, which is Juan Garcia, and a  
4 photo array of Gringo, which is Adalberto Guzman.

5 Q And once at the 101 Precinct, did you have a third  
6 photo spread made up?

7 A Yes.

8 Q How did you do that?

9 A I called the Suffolk County Police Department and  
10 asked them to look into the gang database for a subject  
11 who was known to us as "Zero" at that time.

12 They looked through the database, and they were  
13 able to retrieve a photo of Zorro, whose real name is Rene  
14 Mejia.

15 Q And once that photo spread was made up in Suffolk  
16 County, were you able to retrieve it?

17 A Yes.

18 Q Now, did there come a time when you and Detective  
19 Chase spoke with the suspect?

20 A Yes.

21 Q Who was the suspect?

22 MS. MACEDONIO: May I be heard at sidebar?

23 THE COURT: Yes.

24 (Whereupon, at this time the following took  
25 place at the sidebar.)

**Rivera - Direct/Tierney**

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1 MS. MACEDONIO: Mr. Tierney keeps referring to  
2 Mr. Martinez as "the suspect," but there is nothing in the  
3 record thus far that he's a suspect.

4 THE COURT: Just use a different term.

5 MR. TIERNEY: I believe they said they had a  
6 suspect in custody.

7 THE COURT: It's not a big deal, but just use a  
8 different term.

9 MR. TIERNEY: Okay.

10 (End of sidebar discussion.)

11 BY MR. TIERNEY:

12 Q Detective, I believe you testified earlier your  
13 purpose for going in on March 17th to work was to speak to  
14 an individual who was at the 101 Precinct in Queens.

15 A Yes.

16 Q When you were called into work, did you know that  
17 individual's name?

18 A At that moment, no.

19 Q Once you got to the 101 Precinct, did you then learn  
20 the individual's name who you were going to speaking with?

21 A Yes.

22 Q Who is that individual's name?

23 A Heriberto Martinez.

24 Q Did there come a time on March 17th or March 18th  
25 that you had the opportunity to speak with Heriberto

Rivera - Direct/Tierney

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1 Martinez?

2 A Yes.

3 Q What time was that?

4 A One minute after midnight on March 18, 2010.

5 Q Do you see Heriberto Martinez in the courtroom today?

6 A Yes, I do.

7 Q Can you please point him out with an item of  
8 clothing?

9 A With a dark gray sweater on, I believe.

10 Q What color shirt?

11 A A light-colored shirt.

12 MR. TIERNEY: May the record reflect that the  
13 witness identified the defendant Heriberto Martinez.

14 THE COURT: How many seats from the right to the  
15 left, Mr. Rivera?

16 THE WITNESS: The third seat.

17 BY MR. TIERNEY:

18 Q 12:01 on March 18th, you contacted him?

19 A Yes.

20 Q Where?

21 A In a small interview room in the 101 Precinct.

22 Q What happened once you came into contact with the  
23 defendant?

24 A We were told we had to leave that room, that they  
25 were going to be using it, so we were taken to a larger

Rivera - Direct/Tierney

984

1 office area.

2 Q When the defendant was in that room, was he there  
3 with the other members of the NYPD?

4 A Yes, he was.

5 Q Did you actually transport the defendant from that  
6 room to the second room?

7 A Yes, we escorted him.

8 Q Could you describe the second room you brought him  
9 to?

10 A A large office, 15 by 20 foot. It had file cabinets  
11 all around the office. The reception, the smaller wall,  
12 it had a five-foot table, three chairs around it. That's  
13 where we sat Mr. Martinez.

14 Q How was the defendant brought from the first room to  
15 the second room?

16 A In handcuffs.

17 Q Once he was brought from the first room to the second  
18 room, what was done with the handcuffs?

19 A We took it off.

20 Q Did you and Detective Chase proceed to interview the  
21 defendant in this room?

22 A Yes.

23 Q During the course of your interview, was the  
24 defendant handcuffed once in that room?

25 A No.



**Rivera - Direct/Tierney**

985

1 Q During the entire course of the interview between you  
2 and Detective Chase and the defendant, who was present?

3 A Myself, Detective Robert Chase and the defendant.

4 Q And once you got the defendant into the second room,  
5 what is the first thing you did?

6 A We introduced ourselves, and we told him we want to  
7 speak to him about a murder that occurred in Suffolk  
8 County, but before we did that, we would read him his  
9 rights.

10 Q What did you do?

11 A Read him his rights.

12 Q Did you recite them from memory or read them from  
13 anything?

14 A Read them off the rights card.

15 Q Showing you what has been previously marked as  
16 Government 114 for identification (handing), and I just  
17 ask if you recognize that document.

18 A Yes. This is the rights card that I read off to the  
19 defendant.

20 Q And how do you recognize it as such?

21 A This card has the unique case number attached to this  
22 case. Has my initials and shield number. It has  
23 Detective Chase's signature and shield number and has the  
24 defendant's signature on it.

25 Q Is that the original of that document?

Rivera - Direct/Tierney

986

1 A Yes, sir.

2 Q Is that document in the same or substantially the  
3 same condition as it was after you had advised the  
4 defendant of his rights on March 18th?

5 A Yes.

6 MR. TIERNEY: Your Honor, I would move that in  
7 at this time as Government's Exhibit 114.

8 MS. MACEDONIO: May I see it?

9 THE COURT: Yes.

10 MS. MACEDONIO: Thank you. I have no objection.

11 THE COURT: Ms. Rantala?

12 MS. RANTALA: No objection, your Honor.

13 THE COURT: Government's Exhibit 114 is  
14 admitted.

15 (Whereupon, Government Exhibit 114 was received  
16 in evidence.)

17 BY MR. TIERNEY:

18 Q When you advised the defendant of his rights on  
19 March 18th, did you recite it from memory or from the  
20 card?

21 A Off the card.

22 Q In what language did you read him those rights?

23 A In Spanish.

24 Q Using Government 114, could you illustrate to the  
25 jury the manner in which you read him his rights?

Rivera - Direct/Tierney

987

1 A I read him the first right.

2 Q Again, did you read him that right in English or  
3 Spanish?

4 A In Spanish.

5 Q What did that right mean in English?

6 A You have the right to remain silent.

7 Q After you read him that first right, what happened  
8 next?

9 A I asked him to place his initials after that right.

10 Q What, if anything, did the defendant do?

11 A He placed his initials, HNM, on the card.

12 Q After you read the defendant his first right and he  
13 placed his initials, after that, what happened?

14 A I read him the second right.

15 Q Again, in Spanish?

16 A Yes.

17 Q What does that right mean in English?

18 A Whatever you say can and will be used against you in  
19 a court of law.

20 Q After you read him that right, what happened next?

21 A Asked him to place his initials after that.

22 Q Did he do that?

23 A Yes, he did.

24 Q What did you do after that?

25 A Read him the third right.

Rivera - Direct/Tierney

988

1 Q Again, all these rights were in Spanish?

2 A Yes.

3 Q The thirds right, what does that mean in English?

4 A You have a right to speak to a lawyer right now and  
5 be present with you while you are being questioned.

6 He placed his initials after that.

7 Q After he placed his initials after the third right,  
8 what happened next?

9 A I read him the fourth right.

10 Q What does that mean in English, the fourth right?

11 A If you don't have any funds to obtain a lawyer and  
12 you want to have one, the Court will designates a lawyer  
13 for you before any questioning. If you choose to answer  
14 the questions without a lawyer present, you will have the  
15 right to stop the questioning at any time until you talk  
16 to a lawyer.

17 Q After you read that fourth right to him, what, if  
18 anything, happened?

19 A I asked him to place his initials after that.

20 Q Did he in fact do that?

21 A Yes.

22 Q After you advised him of his rights, did you read him  
23 the waiver of the rights?

24 A Yes, I did.

25 Q What is the first waiver you read to him?

**Rivera - Direct/Tierney**

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1 A You understand these rights as I explained to you.

2 Q Again, you read that to him in Spanish?

3 A Yes.

4 Q What, if anything, was his response to that question?

5 A He said "si." So I asked him to place that word and  
6 his initials after.

7 Q Did you read him a second waiver?

8 A Yes.

9 Q What did that waiver mean in English?

10 A Having these rights in mind, do you want to speak to  
11 us now?

12 Q After you read him that waiver, what happened?

13 A He said "si," which is "yes," and I asked him to  
14 place that word and his initials after that.

15 Q Did he in fact do that?

16 A Yes, he did.

17 Q After he placed "si" and his initials, what happened  
18 next?

19 A I asked him to sign the card, date, and time.

20 Q After the defendant signed and dated and put the time  
21 on the card, what, if anything, did you and Detective  
22 Chase do?

23 A Detective Chase put his shield number and signature  
24 on the card, and the complaint number, and I put my  
25 initials and shield number on the card.

Rivera - Direct/Tierney

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1 Q Just going to show 114 -- I think I'm going to show  
2 114.

3 Now, Detective, just looking at the top, is this  
4 the first right you read to the defendant?

5 A Yes.

6 Q The initials HNM, did he put them there?

7 A Yes.

8 Q The second right, the initials HNM, who put those  
9 initials there?

10 A The defendant.

11 Q With regard to the third right, the initials HNM, who  
12 put those there?

13 A The defendant.

14 Q And the final HNM, he placed them there?

15 A Yes.

16 Q And he placed those initials each time you read the  
17 rights to him?

18 A Yes.

19 Q Down below, what am I referring to? If you can look  
20 behind you, Detective.

21 A I have it on the screen.

22 Q Is that the first waiver?

23 A Yes, sir.

24 Q What is indicated after the first waiver?

25 A The word "si" and his initials "HNM."

Rivera - Direct/Tierney

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- 1 Q And the defendant placed those on the card?
- 2 A Yes.
- 3 Q Down below, the second waiver, what is after that?
- 4 A "Si" and his initials.
- 5 Q The defendant placed that?
- 6 A Yes.
- 7 Q To the right, 12:09 and 3/18/10, who placed that?
- 8 A The defendant.
- 9 Q What is the 12:09?
- 10 A The time we created the card.
- 11 Q This signature, whose signatures is that?
- 12 A The defendant.
- 13 Q Who placed that there?
- 14 A He did.
- 15 Q In the upper right-hand corner, whose initials are
- 16 those?
- 17 A My initials and the shield number.
- 18 Q After that, the initials?
- 19 A It's Detective Chase's.
- 20 Q After you advised the defendant of his rights, what
- 21 happened next?
- 22 A We told him we were investigating the murder of
- 23 Vanessa Argueta and Diego Torres, and we wanted to show
- 24 him a photo array.
- 25 Q And did you in fact do that?

Rivera - Direct/Tierney

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1 A Yes.

2 Q What is the first photo array you showed him?

3 A The first photo array I showed him was of Cruzito,  
4 Juan Garcia.

5 Q So the record is clear, the "si," is that in English  
6 or Spanish?

7 A Spanish.

8 Q What does that mean in English?

9 A "Yes."

10 Q I will show you what has been marked as Government's  
11 Exhibit 116 for identification. Do you recognize that?

12 A Yes. This is the photo array, first photo array,  
13 that we showed to the defendant.

14 Q Okay. And who is the subject of that photo array?

15 A This is Juan Garcia.

16 Q Is that the original of that statement?

17 A Yes, it is.

18 Q How do you recognize it as such?

19 A It has the unique case number to this case, got my  
20 signature on it, got the defendant's signature on it.

21 Q Did you show that, Government 116, to the defendant  
22 on March 18th?

23 A Yes.

24 Q And is that document in the same or substantially the  
25 same condition as it was after you showed it to the



Rivera - Direct/Tierney

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1 defendant on March 18th?

2 A Yes.

3 MR. TIERNEY: Your Honor, at this time I would  
4 move Government's Exhibit 116 in evidence.

5 MS. MACEDONIO: I have no objection, your Honor.

6 MS. RANTALA: No objection, your Honor.

7 THE COURT: Okay. 116 is admitted.

8 (Whereupon, Government Exhibit 116 was received  
9 in evidence.)

10 BY MR. TIERNEY:

11 Q For the record, Detective, I've just placed  
12 Government's Exhibit 116 on the overhead.

13 What is depicted in the top of this document?

14 A Six photographs: one of the suspect in the case and  
15 five fillers.

16 Q And where is -- the suspect is Juan Garcia?

17 A Yes.

18 Q Where is Juan Garcia located within that page?

19 A The upper center photo is Juan Garcia.

20 Q And that is photograph number two?

21 A Correct.

22 Q The upper center photograph, number two, okay.

23 Obviously, when you initially showed this to the  
24 defendant, the handwriting portions were blank?

25 A Yes, sir.

Rivera - Direct/Tierney

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1 Q How did you show this document to the defendant on  
2 March 18th?

3 A We told him that we would be showing him six photos,  
4 males, of similar appearance, if he recognized any of the  
5 photos we were investigating.

6 Q After you gave him that instruction, what did you do  
7 next?

8 A Showed him the photo array.

9 Q After you showed the defendant the photo array, what  
10 happened?

11 A Identified photo two. Asked him to place his  
12 initials and to circle number two.

13 Q After it was circled and the initials are placed  
14 there -- who did that?

15 A The defendant.

16 Q After he did that, what happened?

17 A I asked him how he recognized this person, and he  
18 said this was the person known as "Cruzito" who had shot  
19 Vanessa.

20 Q And thereafter did you fill out that photo spread?

21 A I did.

22 Q Did the defendant sign it?

23 A Yes, he did.

24 Q And on the bottom right-hand side, is that the  
25 defendant's signature?

Rivera - Direct/Tierney

995

1 A Yes, sir.

2 Q Now, after you showed the defendant what has been  
3 marked as Government's Exhibit 116, did you have a  
4 conversation with him?

5 A Yes, we did.

6 Q What did you discuss with -- what did you and  
7 Detective Chase discuss with the defendant?

8 A We talked to the defendant and he stated that he had  
9 learned for Cruzito and Gringo, that they had shot Vanessa  
10 and that Zorro had shot the person that was with Vanessa,  
11 Diego Torres twice. He stated that Gringo shot Vanessa  
12 first in the head, and that Cruzito shot Vanessa in the  
13 chest

14 Q And did he indicate who, if anyone, shot Diego  
15 Torres?

16 A Zorro.

17 Q And did he tell you what the sequence of the shots  
18 were?

19 A Yes. He said that Gringo shot Vanessa in the head  
20 first, Zorro shot Diego Torres twice, and then Cruzito  
21 shot Vanessa in the chest.

22 Q And again, did he tell you how he received  
23 this information? From whom?

24 A He said he received that information from Cruzito.

25 Q And did you have a conversation with him at the time

Rivera - Direct/Tierney

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1 with regard to why Vanessa was shot?

2 A Yes. He stated that Vanessa was shot because she had  
3 tried to have Cruzito killed a month earlier by the 18th  
4 Street Gang.

5 Q Did you also ask him for how long he had known  
6 Cruzito?

7 A Yes.

8 Q What did he say?

9 A He stated he knew Cruzito for three years, and  
10 Cruzito lived at 303 Milburne in Baldwin.

11 Q And after you would this discussion with the  
12 defendant with regard to Cruzito, what did you do next?

13 A We showed him two additional photo arrays.

14 Q What is the first photo array you showed the  
15 defendant?

16 A The first photo array was Zorro, who is Rene Mejia.

17 Q I will show you what has been marked as Government's  
18 Exhibit 117. Do you recognize that?

19 A Yes. This was the photo array that was shown to the  
20 defendant.

21 Q Who was the subject of the photo array?

22 A Rene Mejia, or Zorro.

23 Q Is that the original of the statement?

24 A Yes, it was.

25 Q How do you recognize it as such?

Rivera - Direct/Tierney

997

1 A Central complaint number that is unique in the case,  
2 my signature on it and the defendant's signature on it.

3 Q And is that document in the same or substantially the  
4 same condition as it was after you showed it to the  
5 defendant on March 18th?

6 A Yes.

7 Q I will show you what has been marked as Government's  
8 Exhibit 117-A for identification, and I'm going to ask you  
9 if you recognize that (handing).

10 A Yes.

11 Q Is 117-A, is that a redacted copy of Government's  
12 Exhibit 117?

13 A Yes.

14 Q And other than the redaction, is it a fair and  
15 accurate representation of the original, Government's  
16 Exhibit 117?

17 A Yes, sir.

18 MR. TIERNEY: Your Honor, I would move  
19 Government's Exhibit 117-A into evidence at this time.

20 MS. MACEDONIO: No objection.

21 MS. RANTALA: Your Honor, may I view that  
22 particular exhibit?

23 MR. TIERNEY: Certainly (handing).

24 MS. RANTALA: No objection.

25 THE COURT: Ms. Macedonio?

Rivera - Direct/Tierney

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1 MS. MACEDONIO: I have no objection.

2 THE COURT: 117-A is admitted.

3 (Whereupon, Government Exhibit 117-A was  
4 received in evidence.)

5 THE COURT: Let me explain to you again, the  
6 redaction came up. Redaction means that I have instructed  
7 that the irrelevant information should be redacted out of  
8 the exhibit. You shouldn't speculate what was redacted  
9 out. You are not allowed to speculate on that at all.

10 Otherwise, you consider the exhibit as any other  
11 piece of evidence.

12 BY MR. TIERNEY:

13 Q I've placed on the overhead Government's  
14 Exhibit 117-A. Do you recognize the redacted version of  
15 Government's Exhibit 117?

16 A Yes.

17 Q What is depicted in the top of the document?

18 A The suspect and five fillers.

19 Q Again, who is the suspect?

20 A Zorro. Rene Mejia.

21 Q Where is he in the pocket?

22 A Lower panel photo in the center.

23 Q For the record, the photo identified as number five?

24 A Yes.

25 Q After you showed -- withdrawn.

**Rivera - Direct/Tierney**

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1           What, if anything, did you say to the defendant  
2 prior to showing him Government's Exhibit 117?

3       A     I told him that we would be showing him a photo array  
4 of six males, similar in appearance, and wanted him to let  
5 us know if he recognized anyone in the photo from our case  
6 in Suffolk County.

7       Q     After you gave the defendant the instruction, did you  
8 show him the photo array?

9       A     Yes.

10      Q     What, if anything, did the defendant do?

11      A     He identified photo five as Zorro.

12      Q     And after he identified Government's Exhibit -- I'm  
13 sorry, photo number five, what did you ask him to do?

14      A     Asked him to circle number five and place his  
15 initials on the document.

16      Q     Where the number is circled and there are initials,  
17 the defendant placed that there?

18      A     Yes, sir.

19      Q     After that, yes or no, did you ask him how he knew  
20 Gringo?

21      A     This is Zorro.

22      Q     I'm sorry, I mean Zorro.

23      A     Yes.

24      Q     Did he tell you that Zorro was the guy who told him  
25 that he shot and killed the individual, the male who was

Rivera - Direct/Tierney

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1 with Vanessa?

2 A Yes.

3 Q I believe you showed the defendant a second photo  
4 spread?

5 A Yes.

6 Q Who was the subject of that second photo spread or  
7 photo array?

8 A Gringo, Adalberto Guzman.

9 Q I will show you what has previously been marked as  
10 Government's Exhibit 118, and I just ask you if you  
11 recognize that.

12 A Yes. This is the photo array of Gringo that we  
13 showed to the defendant.

14 Q And is that the original of that document?

15 A Yes, sir.

16 Q And how do you recognize that as such?

17 A This has the same central complaint number attached  
18 to this case, it has my signature on it, and it has the  
19 defendant's signature on it.

20 Q Is that document in the same or substantially the  
21 same condition as it was after you executed it with the  
22 defendant on March 18th?

23 A Yes.

24 Q I'm now going to show you what has previously been  
25 marked as Government's Exhibit 118-A, and I ask you if you



Rivera - Direct/Tierney

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1 recognize that document.

2 A Yes.

3 Q Is that a redacted copy of Government's Exhibit 118?

4 A Yes, sir.

5 Q Other than the redaction, is that a fair and accurate  
6 representation of the original, Government's Exhibit 118?

7 A Yes, sir.

8 MR. TIERNEY: Your Honor, I would move  
9 Government's Exhibit 118-A in evidence.

10 Before I move that in, I'll show defense  
11 counsel.

12 (Handing to counsel.)

13 MS. RANTALA: No objection, your Honor.

14 MS. MACEDONIO: I have no objection.

15 THE COURT: 118-A is admitted.

16 (Whereupon, Government Exhibit 118-A was  
17 received in evidence.)

18 THE COURT: It's 11:30. Do you wish to break  
19 now?

20 MR. TIERNEY: Perhaps after I show him this  
21 document.

22 BY MR. TIERNEY:

23 Q I'm placing on the overhead Government's  
24 Exhibit 118-A. Do you recognize that, Detective?

25 A Yes.

Rivera - Direct/Tierney

1002

1 Q What do you recognize that -- withdrawn.

2 Do you recognize that document as the redacted  
3 version of Government's Exhibit 118?

4 A Yes, sir.

5 Q Okay. And again, the upper portion of the document,  
6 what is depicted there?

7 A The suspect and five fillers.

8 Q And the suspect, again, in this case is Gringo,  
9 Adalberto Guzman?

10 A Yes, sir.

11 Q Where is he located within the six photos?

12 A The upper panel of the photo, all the way on the  
13 right, number three.

14 Q For the record, that is number three?

15 A Yes.

16 (Continued on the following page.)

17

18

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25

Rivera - direct/Tierney

1003

1 Q The handwritten portion of this document was blank  
2 when you showed it to the defendant, correct?

3 A Correct.

4 Q Did you provide the defendant instructions prior to  
5 showing him this document?

6 A Yes; I showed him a photo array of six males similar  
7 in appearance, wanted him -- if he recognized anyone in  
8 the group photos relative to our case, to let us know.

9 Q After you gave him that instruction, did you show him  
10 the photo spread?

11 A Yes.

12 Q What, if anything, did he do?

13 A He identified photo number 3 as being Gringo, or  
14 Adalberto Guzman.

15 Q After he identified photo number 3 as Gringo, what  
16 did you do?

17 A I asked him to place a circle around number 3 and  
18 place his initials there.

19 Q Under number 3 where the circle is, he placed his  
20 initials there?

21 A Yes.

22 Q Did the defendant tell you words to the effect this  
23 is the individual he knows as Gringo, and he told you he  
24 was with Cruzito and Zorro when they killed Vanessa and  
25 the other guy that was with Vanessa?

Rivera - direct/Tierney

1004

1 A Yes.

2 Q One more thing, after he indicated that, did you fill  
3 out the document?

4 A Yes.

5 Q On the bottom, did you have the defendant sign it?

6 A Yes, sir.

7 Q Is the signature on the bottom left hand, that's his  
8 signature?

9 A Yes, sir.

10 Q Next to his signature is your signature?

11 A Yes, sir.

12 Q And on the bottom right hand, did you have the date  
13 and time?

14 A Yes.

15 Q And you finished showing him these three photo  
16 spreads at 12:23 in the morning?

17 A Yes, sir.

18 THE COURT: We will take the morning break.

19 Don't discuss the case.

20 (The jury leaves the courtroom.)

21 (A recess was taken.)

22 THE COURT: Please be seated.

23 Let's get the witness and the jury.

24 (The jury enters the courtroom.)

25 THE COURT: Please be seated.

Rivera - direct/Tierney

1005

1 Mr. Tierney, go ahead.

2 BY MR. TIERNEY:

3 Q I believe, Detective, when we left off you had just  
4 finished showing the defendant the third of three photo  
5 spreads.

6 After you showed the defendant that third photo  
7 spread, what happened next?

8 A We had a conversation with him.

9 Q Approximately how long did this conversation last?

10 A About an hour and 30 minutes.

11 Q Who participated in the conversation?

12 A Detective Chase ran the interview. I was there in  
13 case there were any communication problems.

14 Q During the course of your interaction with the  
15 defendant and the interview that you and Detective Chase  
16 participated in, what language was it conducted in?

17 A English.

18 Q During the course of the conversation, were at times  
19 you called upon to provide interpretation?

20 A Yes.

21 Q Did you have any problem understanding the defendant?

22 A No, I did not.

23 Q Did the defendant appear to have any problems  
24 understanding you?

25 A No.

Rivera - direct/Tierney

1006

1 Q And what was the defendant's demeanor during the  
2 interview?

3 A He was calm and cooperative.

4 Q Now, the conversation that you had for an hour and a  
5 half, what did you speak about?

6 A We talked about the murder in Central Islip.

7 Q Did you speak about any other incidents in either  
8 Queens or Nassau County?

9 A No.

10 Q Why not?

11 A That wasn't our case.

12 Q Then after that hour-and-a-half statement, what  
13 happened next? Sorry, after that hour-and-a-half  
14 conversation, what happened next?

15 A We asked him if he would give a statement to us.

16 Q What, if anything, was his response to that request?

17 A He said he would.

18 Q Did you, in fact, take a statement from him at that  
19 time?

20 A Yes, sir.

21 Q I'm going to show you what has been marked as  
22 Government Exhibit 115. I just ask you if you recognize  
23 that.

24 A This is the three-page statement that we took from  
25 the defendant.

**Rivera - direct/Tierney**

1007

1 Q Is that the original of that statement?

2 A Yes, sir.

3 Q How do you recognize it as such?

4 A The statement has the unique case number that's  
5 attached to this case and has my signature on it, and it  
6 has the defendant's signature on it four different times,  
7 and has Detective Chase's signature on it.

8 Q You indicated that -- where is the defendant's  
9 signature on the first page of that document?

10 A It's in the middle of the page after he writes, and  
11 it's also at the bottom of the page, and each of the  
12 preceding pages it's on the bottom of the page.

13 Q That document, is it in the same or substantially the  
14 same condition as it was after you and Detective Chase  
15 obtained it from defendant on March 18th?

16 A Yes.

17 Q I'm going to show you now what's marked as Government  
18 Exhibit 115A for identification. Do you recognize that?

19 Actually, do you recognize that document as a  
20 redacted version of the original statement you took from  
21 the defendant, Government's Exhibit 115?

22 A Yes.

23 Q Other than the redaction, is it a fair and accurate  
24 representation of the original statement, Government  
25 Exhibit 115?

Rivera - direct/Tierney

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1 A Yes.

2 MR. TIERNEY: I would move it into evidence at  
3 this time, your Honor, Government Exhibit 115A.

4 MS. MACEDONIO: With the exception of my  
5 pretrial motions, I would continue those objections, but I  
6 have no others.

7 MS. RANTALA: I would continue with the same  
8 objection, and other than that, no objections.

9 THE COURT: Okay. Come up to the sidebar.  
10 (Continued on the next page.)

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Sidebar

1009

1 (Sidebar.)

2 THE COURT: Why don't you -- maybe it's self  
3 evident. Maybe explain to the jury that the second page  
4 was typed up.

5 MR. TIERNEY: Okay.

6 THE COURT: Lead him through it and explain  
7 that.

8 MR. TIERNEY: Very good.

9 (Sidebar concluded.)

10 (Continued on the next page.)

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Sidebar

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1 (In open court.)

2 THE COURT: 115A is admitted.

3 (Government Exhibit 115A received in evidence.)

4 MR. TIERNEY: (Cont'd)

5 Q For the record, Detective, 115A, page 1 of 115A, is  
6 an exact copy of the first page of the original statement,  
7 correct?

8 A Yes, sir.

9 Q And then what was done was with regard to the second  
10 page of 115A, that's just a typewritten redacted version  
11 of pages 2 and 3 of the original document, correct?

12 A Yes, sir.

13 Q Now, after the defendant agreed to give -- provide  
14 you and Detective Chase with a written statement, what's  
15 the first thing that you and Detective Chase did after  
16 that?

17 A We reread him his rights.

18 Q How did you do that?

19 A Being that this document is not in Spanish, I used  
20 the rights card we had originally used, used the language  
21 -- the Spanish language of that card, I asked him the  
22 rights questions and asked him to place his initials after  
23 each right on this document.

24 Q Again, your custom and practice with regard to  
25 advising defendants of their rights, either in Spanish or

Sidebar

1011

1 English, do you ever recite those from memory or do you  
2 always read them off a card?

3 A I always read them off the card.

4 Q I'm going to just show you what has been marked as  
5 Government Exhibit 115A. And what's depicted in the upper  
6 portion of that document, I'm going to hit the lights so  
7 the jury can see it.

8 What's depicted in the top portion of that page?

9 A The upper portion of the document is the rights and  
10 the waiver of rights.

11 Q Again, you read him those rights in Spanish off of  
12 the original card, Government Exhibit 114?

13 A Yes, sir.

14 Q In the first right, what is that?

15 A You have the right to remain silent.

16 Q After you read him that right in Spanish, what  
17 happened?

18 A I asked him to place his initials.

19 Q Next to that right, is that where the defendant  
20 placed his initials?

21 A Yes, sir.

22 Q Did you read him the second right?

23 A Yes.

24 Q What does that mean in English?

25 A Anything you say can and will be used against you in

Sidebar

1012

1 a court of law.

2 Q After you read him that second right, did he place  
3 his initials next to that?

4 A Yes, sir.

5 Q Did you then read him the third right?

6 A Yes.

7 Q Again, what does that mean in English?

8 A You have a right to talk to a lawyer right now and  
9 have him present when you are being questioned.

10 Q After you read him that right, what did you ask him  
11 to do?

12 A I asked him to place his initials.

13 Q On the document it says HNM, is that the defendant's  
14 initials?

15 A Yes.

16 Q Then the fourth right?

17 A Yes.

18 Q In Spanish?

19 A Yes.

20 Q What does that right mean in English?

21 A If you cannot afford a lawyer, one will be appointed  
22 for you -- if you cannot afford a lawyer and want one, a  
23 lawyer will be appointed for you by the Court before any  
24 questioning. If you decide to answer questions now  
25 without a lawyer present, you will have the right to stop

Sidebar

1013

1 the questioning at any time until you talk to a lawyer.

2 Q After you read him that right, did he place his  
3 initials?

4 A Yes, sir.

5 Q And after you went through the advice of rights, did  
6 you read him the two waiver of rights questions?

7 A Yes, sir.

8 Q Again, was that done in Spanish off the card?

9 A Yes.

10 Q The first waiver of rights question, what does that  
11 mean in English?

12 A Do you understand each of these rights as I have  
13 explained to you.

14 Q After you read the defendant that first waiver, what,  
15 if anything, happened?

16 A He answered "si," which means yes, and I asked him to  
17 place the word and his initials after that.

18 Q So that's the defendant's handwriting, "si," then his  
19 initials?

20 A Yes.

21 Q Did you read him the second waiver?

22 A Yes.

23 Q Again in Spanish?

24 A Yes.

25 Q What does that second waiver mean in English?

Sidebar

1014

1 A Having these rights in mind, do you wish to talk to  
2 us now.

3 Q After you read him that right, what happened?

4 A He answered "si" and I asked him to place his answer  
5 and his initials after that.

6 Q Did he do that?

7 A Yes, sir.

8 Q Right here, is that "si" and his initials?

9 A Yes.

10 Q After you asked him to do that, what happened next?

11 A I asked him to place his initials at the bottom of  
12 the form.

13 Q Did he do that?

14 A Yes.

15 Q What happened next?

16 A Then Detective Chase and I had a conversation with  
17 him. I put the time we started, the statement and I  
18 signed it.

19 Q Whose signature is that?

20 A That's the defendant's signature.

21 Q For the record, that's the middle of the page on the  
22 right-hand side.

23 When did defendant sign that?

24 A Right after the rights.

25 Q Who placed the date, the time on the document below

Sidebar

1015

1 that?

2 A I did.

3 Q The 2:05 reflected the time after you advised him of  
4 his rights the second time?

5 A Yes, sir.

6 Q Then you signed it?

7 A Yes, sir.

8 Q After you went through the defendant's rights with  
9 him the second time, what happened then?

10 A We had a further conversation with him about the  
11 events in Central Islip on February 5.

12 Q This was for the purpose of taking a statement from  
13 him?

14 A Yes.

15 Q So how that was statement obtained with regard to  
16 this conversation?

17 A That went line by line, we went -- Detective Chase  
18 already had a lot of the information that we were going to  
19 be putting on the statement, so in verifying the  
20 information, we would go line by line writing it out.

21 Q Again, during this process, were you available to  
22 translate in Spanish, if needed?

23 A Yes.

24 Q Did there come a time when the statement was  
25 concluded?

Sidebar

1016

- 1 A Yes.
- 2 Q Approximately how long did it take you to write out
- 3 the statement with the defendant?
- 4 A 25 to 30 minutes, I believe.
- 5 Q Then after the statement was written out, what
- 6 happened next?
- 7 A Then Detective Chase was reading it, as we went
- 8 through, he gave it to the defendant to read, he appeared
- 9 to be reading it, and I read it to him in Spanish.
- 10 Q You read the entire document to him in Spanish?
- 11 A Yes.
- 12 Q After you read the entire document to him in Spanish,
- 13 then what happened?
- 14 A We asked if -- I asked for clarification on the gun
- 15 that was used, and he wrote in on, I believe it's page 2.
- 16 Q What did he write in?
- 17 A "This is the gun that I had this morning."
- 18 Q Did he write that in English or Spanish?
- 19 A In Spanish.
- 20 Q What is the Spanish phrase for: This is the gun that
- 21 I had this morning?
- 22 A Esta es la pistola que yo teni esta mañana.
- 23 Q Did the defendant write that Spanish phrase in the
- 24 statement?
- 25 A Yes, sir.



## Sidebar

1017

1 Q Could you read to the government the body of the  
2 statement at this time -- sorry, could you read to the  
3 jury the body of this statement at this time?

4 A Yes.

5 THE COURT: Read it slowly so the court reporter  
6 can take it down.

7 A I, Heriberto N. Martinez, being duly sworn, depose  
8 and say I am 23 years old. I was born on 2/17 of '87 in  
9 El Salvador. I live at 1261 Central Avenue, Apartment  
10 108A, Far Rockaway. I work as a dishwasher at the Woodrow  
11 Restaurant on Peninsula Shopping Center in Hewlett. My  
12 friend Juan Garcia, who is also called Cruzito, I have  
13 known for 2 or 3 years. Cruzito lives in Baldwin.  
14 Cruzito's girlfriend is Jennifer Valle.

15 About 2 months ago, Cruzito told me that a girl  
16 named Vanessa was trying to have him killed by members of  
17 the 18th Street gang. Cruzito is MS-13 CLS. CLS is  
18 Coronados Locos Salvatruchas. Cruzito told me that  
19 Vanessa was going to be killed with a pistol. He was  
20 going to get a gun to kill her.

21 About one month ago, I went home and I met  
22 Cruzito, Gringo and Zorro outside my apartment. Cruzito  
23 said he shot Vanessa. Cruzito said Gringo shot Vanessa  
24 first in the head, then Cruzito said he shot Vanessa in  
25 the chest. Zorro said he shot the guy that was with

## Sidebar

1018

1 Vanessa twice. Zorro said at first he shot the guy once,  
2 and then Zorro said he shot him again.

3 Cruzito said he had done this the day before. I  
4 know that my friend Diego had been with Cruzito, Gringo  
5 and Zorro earlier. Later I talked to Diego and Diego told  
6 me what Cruzito had said about Vanessa and the guy that  
7 was with Vanessa being killed.

8 I saw the gun that was used to kill Vanessa  
9 before she was killed. The gun was a small silver  
10 handgun. Esta es la pistola que yo teni esta mañana.  
11 HNM.

12 Q Is that the defendant's initials?

13 A Yes, sir.

14 Cruzito and Zorro told me they killed Vanessa  
15 and the other guy in a wooded area in Central Islip.

16 I spoke to Cruzito on my cell phone two weeks  
17 ago. My cell phone number is 516-244-5546. Cruzito's  
18 phone number is in my cell phone under the name Cruz.  
19 Cruzito said he was going to El Salvador with Zorro and  
20 Gringo.

21 Cruzito said that Vanessa was killed in the  
22 woods while the other guy that was with Vanessa was still  
23 in the car. Zorro got the other guy out at the car,  
24 brought him into the woods and killed him.

25 I have viewed six photographs of males similar

## Sidebar

1019

1 in appearance and have selected the person in position  
2 number 2 as Cruzito, or Juan Garcia.

3 I have viewed six photographs of males similar  
4 in appearance and have selected the person in position  
5 number 5 as Zorro, who I now know as Rene Mejia.

6 I have viewed 6 photographs of males similar in  
7 appearance and have selected the person in position number  
8 3 as Gringo, who I now know as Adalberto Guzman.

9 I have read the above statement of 3 pages and I  
10 swear it is true. This statement has been read to me in  
11 Spanish by Detective Ralph Rivera, shield number 1121.

12 Q The redacted version isn't signed. Is the original  
13 signed by the defendant, although the redacted isn't?

14 A Yes.

15 Q The statement mentions the defendant indicated that  
16 he: Later I talked to Diego and Diego told me what  
17 Cruzito had said about Vanessa and the guy that was with  
18 Vanessa being killed.

19 When the defendant was referring to Diego in  
20 that statement, do you know to which Diego he was  
21 referring?

22 A Diego Marroquin.

23 Q That was the same individual who was in custody in  
24 Queens that you had spoke to earlier?

25 A Yes, sir.

**Rivera - cross/Macedonio**

1020

1 Q Also during the statement, the defendant --  
2 withdrawn.

3 Did you ask the defendant whether or not Cruzito  
4 was a member of the MS-13 gang?

5 A Yes, he said he was part of the CLS.

6 Q And did you -- did the defendant indicate to you at  
7 any time that night whether he was a member of the MS-13?

8 A No, sir.

9 Q No, he never indicated he was a member of the MS-13?

10 A Correct.

11 Q Thank you. If I can have a moment.

12 MR. TIERNEY: Nothing further, your Honor.

13 Thank you.

14 THE COURT: Ms. Macedonio?

15 MS. MACEDONIO: Thank you, Judge.

16 CROSS-EXAMINATION

17 BY MS. MACEDONIO:

18 Q Good afternoon, Detective. How are you?

19 A Good afternoon. Good.

20 Q You testified that you were called out at 10:00 a.m.  
21 on March 17 of 2010; is that correct?

22 A Yes.

23 Q Tell us or explain to us how it was you got called  
24 out.

25 A I was called at home by Detective Robert Chase, who

**Rivera - cross/Macedonio**

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1 stated that he had gotten word there was an individual in  
2 the NYPD under arrest that may have information pertaining  
3 to our murder in Suffolk County.

4 Q So what did Detective Chase ask you to do?

5 A He asked me to go into the city with him in case the  
6 person didn't speak any English.

7 Q So there had been some indication from NYPD they had  
8 a person in custody, correct?

9 A Yes.

10 Q And NYPD had communicated to Suffolk County Police  
11 Department that the person would need the assistance of a  
12 Spanish interpreter, correct?

13 A No, not that I'm aware of. I wasn't part of that  
14 conversation.

15 Q You weren't the detective on this case, right?

16 A Correct.

17 Q And it was your understanding that the reason why you  
18 were being called in was because you speak Spanish,  
19 correct?

20 A Yes.

21 Q So would it be fair to say that your understanding  
22 was that you were going in to translate whatever  
23 conversation might ensue?

24 A I was going in case the person didn't speak any Span  
25 -- any English.

**Rivera - cross/Macedonio**

1022

1 Q Because in case the person didn't speak English,  
2 because you speak Spanish?

3 A Yes.

4 Q You weren't going in because the person spoke  
5 Chinese?

6 A Correct.

7 Q This wasn't your case?

8 A Correct.

9 Q Other than speaking to Mr. Martinez on March 18 of  
10 2010, have you had any other involvement in this case?

11 A No.

12 Q So you are called from some location at 10 a.m. on  
13 March 17, and when you arrive at -- in the city?

14 A 12:40 p.m.

15 Q Correct me if I'm wrong, I think you went to the  
16 101st Precinct in Far Rockaway?

17 A Correct.

18 Q When you get to the 101st Precinct in Far Rockaway,  
19 are you told anything about the person that you intend to  
20 speak to?

21 A Yes. At that time we learned his name and we learned  
22 that he was under arrest by the NYPD.

23 Q Did you learn that Mr. Martinez had been in custody  
24 from the NYPD from the early morning hours of March 17?

25 A I was not aware of what time they had placed him into

**Rivera - cross/Macedonio**

1023

1 custody.

2 Q Did you ever learn that?

3 A No.

4 Q So you clearly knew when you were called at 10 a.m.  
5 they had someone already in custody?

6 A Yes.

7 Q As you are leaving Suffolk County, you understand the  
8 person you want to speak to is already in the 101st  
9 Precinct?

10 A Yes.

11 Q You are not going on a lark, you know there is  
12 someone you want to speak to?

13 A Yes, sir -- ma'am.

14 Q You arrive at the 101st Precinct at 12:40 in the  
15 afternoon, right?

16 A Correct.

17 Q And what happens then?

18 A We get to the precinct, get some information from the  
19 Nassau and NYPD detectives, and we wait to speak to the  
20 defendant.

21 Q So essentially you and Detective Chase have to wait  
22 around from 12:40 in the afternoon until 12 the next day;  
23 is that fair to say?

24 A Yes, ma'am.

25 Q Did you understand that the reason why you were

Rivera - cross/Macedonio

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1 waiting around is because other people were wanting to  
2 speak to Mr. Martinez?

3 A Yes, ma'am.

4 Q So when you speak to Mr. Martinez, you are certainly  
5 not the first person, in your understanding, who spoke to  
6 Mr. Martinez that day?

7 A Correct.

8 Q Now, do you have any idea how many individuals spoke  
9 to Mr. Martinez before you did?

10 A I'm sure the NYPD and Nassau had spoken to him before  
11 we were able to speak to him.

12 Q So he is in the prison under arrest?

13 A Correct.

14 Q There are officers that would have effectuated that  
15 arrest, correct?

16 A Correct.

17 Q And so would it be fair to say they would have had  
18 some communication with Mr. Martinez during that process?

19 A Yes.

20 Q And then when he is in the precinct, it's your  
21 understanding that NYPD speaks to him, correct?

22 A Yes.

23 Q And do you know how many officers from NYPD spoke to  
24 him?

25 A No.



**Rivera - cross/Macedonio**

1025

1 Q Are you aware of the length of period of time that  
2 NYPD spoke to him?

3 A No.

4 Q And you are also aware that officers from Nassau  
5 County were present?

6 A Yes.

7 Q Because they were present waiting with you, right?

8 A Yes.

9 Q So you are sitting around the 101st Precinct with  
10 both NYPD and Nassau County officers waiting to speak to  
11 Mr. Martinez, right?

12 A I'm waiting there, yes.

13 Q And when you entered the room to speak to  
14 Mr. Martinez, there were NYPD officers with him, right?

15 A Yes.

16 Q Is it fair to say that there was a whole range of  
17 individuals who had spoken to Mr. Martinez before you  
18 actually met with him?

19 A I would say that there were other people that were  
20 speaking to him, yes.

21 Q But there were people from NYPD, right?

22 A Yes.

23 Q Officers -- those were detectives who were speaking  
24 to him?

25 A Yes.

Rivera - cross/Macedonio

1026

1 Q Would have been regular patrol officers who  
2 effectuated the arrest, right?

3 A Yes. I don't know what time he was placed under  
4 arrest, so I mean, there could have been a whole  
5 investigative process before he was placed under arrest.  
6 I don't know anything about that particular case, so I  
7 can't speculate on that.

8 Q Understood.

9 My question is, before you got to speak to him,  
10 there was a whole range of other law enforcement personnel  
11 who had spoken to him?

12 A There were other people, yes.

13 Q And there was a range --

14 A It was to my -- no. Two other people, not a whole  
15 range. It's two other police people.

16 Q I will withdraw the question.

17 There were police officers who were arresting  
18 him, NYPD?

19 A Yes.

20 Q Detectives who were interviewing him from NYPD?

21 A Yes.

22 Q Nassau County detectives who were interviewing him,  
23 correct?

24 A Yes.

25 Q And that is going on, to the best you know, because

Rivera - cross/Macedonio

1027

1 he is in custody at 10 a.m. Then you don't speak to him  
2 until the next day, until early morning the next day,  
3 correct?

4 A Correct.

5 Q During that period of time, you have absolutely no  
6 idea what any of these individuals have said to Mr.  
7 Martinez, right?

8 A Correct.

9 Q You don't know if they have threatened him, right?

10 A Correct.

11 Q You don't know if anyone has put a hand on him,  
12 right?

13 A Correct.

14 Q Because you weren't present for any of this?

15 A Correct.

16 Q You don't know whether he was given anything to eat,  
17 right?

18 A Correct.

19 Q You don't know if when he was brought in, if he was  
20 under the influence of alcohol or narcotics?

21 A Correct.

22 Q So by the time you get to him, which is at least 14  
23 hours later, right, from 10 a.m. until just after  
24 midnight?

25 A Correct.

**Rivera - cross/Macedonio**

1028

1 Q There is a whole group -- there are several law  
2 enforcement personnel who have spoken to him, you don't  
3 know what transpired during those 14 hours, at least 14  
4 hours?

5 A Right.

6 Q Now, the statement that Mr. Martinez purportedly made  
7 to you, did you audiotape that?

8 A No.

9 Q Did you videotape that?

10 A No.

11 Q Did you use even your cell phone to memorialize what  
12 he was saying to you?

13 A No.

14 Q So in the 14-hour period that you were at the 1 -- in  
15 the 14-hour period you knew you were going to conduct this  
16 interview, or you were hopeful you were going to conduct  
17 this interview, neither you nor Detective Chase said:  
18 Maybe we should memorialize this?

19 A We memorialized it in writing.

20 Q You didn't -- neither one of you said: We should  
21 audiotape this or videotape this, right?

22 A Correct.

23 Q And after you spoke to Mr. Martinez, and you believed  
24 he was being cooperative, at that point neither one of you  
25 said: Gee, maybe we should audio record this?

Rivera - cross/Macedonio

1029

1 A Right.

2 Q Neither one of you said: Maybe we should make a  
3 video of this?

4 A Correct.

5 Q You said Mr. Martinez's attitude was that he was calm  
6 and cooperative, right?

7 A Yes, ma'am.

8 Q So it wouldn't have been that you felt he was lying  
9 to you, and you didn't want to memorialize the  
10 conversation, you just chose not to do it, right?

11 A It's not the Suffolk County policy to audio or  
12 videotape confessions or statements.

13 Q Well, putting aside what the policy is, you chose not  
14 to do it?

15 A We go by policy.

16 Q Okay. There is never a time in Suffolk County where  
17 there is a video or audio of a statement from a man who is  
18 confessing to a double homicide in Suffolk County?

19 A There is now, yes.

20 Q There is now?

21 A There wasn't at that time.

22 Q Not in 2010?

23 A Correct.

24 Q Okay. My question to you was, or it was your  
25 statement it was never done?

Rivera - cross/Macedonio

1030

1 A It was never done.

2 Q Never?

3 A It was done as recap in Suffolk County when we had  
4 the facilities to do that.

5 Q You spoke to Mr. Martinez before you took the  
6 statement in writing?

7 A Yes.

8 Q So then you recapped it when you took it in writing?

9 A Yes.

10 Q There is no video or audio, fair to say?

11 A Correct.

12 Q Now, you first come into contact with Mr. Martinez, I  
13 think at 12:01 a.m.; is that right?

14 A Yes.

15 Q Then, I think the Miranda card indicates a time of  
16 12:09, correct?

17 A Correct.

18 Q In that eight-minute period, it's your testimony that  
19 you advised Mr. Martinez of his Miranda rights, correct?

20 A That eight-minute period we took him from the first  
21 room we met him to the second room, and advised him of his  
22 Miranda warnings, yes.

23 Q And after you did that, it's your testimony that a  
24 conversation ensued, right?

25 A Yes.

Rivera - cross/Macedonio

1031

1 Q Government Exhibit 115A, which is the redacted  
2 statement that you looked at before, that has a time on it  
3 as well; does it not?

4 A Yes.

5 Q What is the time that's on that, do you have it  
6 there?

7 A On the statement form it's 2:05.

8 Q So it's two hours later that you decide you are going  
9 to memorialize the statement in writing, right?

10 A Yes.

11 Q Now, it's your testimony you decided to once again  
12 advise Mr. Martinez of his Miranda warnings, correct?

13 A Yes.

14 Q And once again, you did that in Spanish; did you not?

15 A Yes.

16 Q But the form, 115A, this form is in English?

17 A Correct.

18 Q Now, you testified that most of the conversation with  
19 Mr. Martinez was conducted in English?

20 A That's correct.

21 Q But you felt the need, when you were advising him of  
22 his Miranda warnings, to do it in Spanish?

23 A Yes.

24 Q Do you see the part where it says: Waiver of rights?

25 A Yes.

Rivera - cross/Macedonio

1032

1 Q One, do you understand each of these rights I have  
2 explained to you?

3 Answer: And he writes "si."

4 A Yes.

5 Q "Si" in Spanish means yes?

6 A Correct.

7 Q It's your testimony that Mr. Martinez was having no  
8 trouble understanding English?

9 A Yes.

10 Q But yet, for the simplest word in the English  
11 language, he doesn't write yes, Y.E.S., he writes "si" and  
12 his initials, right?

13 A Yes.

14 Q Now, the statement -- this is your handwriting,  
15 right?

16 A No.

17 Q Whose handwriting is this?

18 A Detective Chase.

19 Q It's not Mr. Martinez's handwriting?

20 A Correct.

21 Q And the second page of it, which has been redacted  
22 and is typed, all of this was written by Detective Chase,  
23 correct?

24 A Correct.

25 Q Now, do you see the part I have highlighted, the



Rivera - cross/Macedonio

1033

1 first part?

2 A Yes.

3 Q You testified that you wanted to clarify something  
4 with Mr. Martinez because you were unsure of something?

5 A I wanted clarification on it.

6 Q And so his response to your question, or to your  
7 inquiry that you needed to clarify, again he writes that  
8 in Spanish, correct?

9 A Yes.

10 Q Now, the statement that you are taking down, or that  
11 was being taken down by Detective Chase, this is  
12 purportedly Mr. Martinez's statement?

13 A Right.

14 Q His words?

15 A Right.

16 Q No one is putting words in his mouth?

17 A Correct.

18 Q You get to the bottom part of this, it says: I have  
19 viewed six photographs of males similar in appearance and  
20 have selected the person in position number 2 as Cruzito  
21 or Juan Garcia.

22 That was -- those weren't Mr. Martinez's words,  
23 are they?

24 A No.

25 Q It says: I have viewed 6 photographs of males

Rivera - cross/Macedonio

1034

1 similar in appearance and have selected the person in  
2 position number 5 as Zorro, who I know as Rene Mejia.

3 Those aren't Mr. Martinez's words, are they?

4 A No, those are standard sentences we use.

5 Q Either you or Detective Chase are putting your spin  
6 on this, right?

7 A No, that's what was done.

8 Q Right. Well, but those aren't his words, he didn't  
9 say: I looked at something and it looks like -- you are  
10 telling him what is going to be put on this form?

11 A We are memorializing what occurred in the room.

12 Q These aren't words he picked out?

13 A No.

14 Q These are words that Detective Chase put down on the  
15 page, right?

16 A Yes.

17 Q You knew that Mr. Martinez had been in the 101st  
18 Precinct since at least 10:00?

19 A Yes.

20 Q Is it your testimony that he appeared in no way to be  
21 sleepy?

22 A Correct.

23 Q Did he appear to be impaired in any fashion?

24 A No, ma'am.

25 Q Did you learn, Detective, that Mr. Martinez worked at

Rivera - cross/Macedonio

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1 a restaurant as a dishwasher?

2 A Yes.

3 Q Did you also learn that on March 17 that he had  
4 worked a full shift that day?

5 A No.

6 Q You didn't learn that?

7 A No, ma'am.

8 Q So you had no idea as to what he had done on March  
9 17?

10 A Correct.

11 Q You testified at an earlier proceeding with regard to  
12 this statement; is that correct?

13 A Yes.

14 Q Did you testify in that proceeding that you're not  
15 proficient in Spanish?

16 A Yes.

17 Q In fact, didn't you testify in that proceeding that  
18 you essentially have a third-grade level of Spanish?

19 A I have no proficiency in writing Spanish. That's  
20 what I testified to.

21 Q Right.

22 A You said Spanish.

23 Q I apologize. While it's your testimony that you can  
24 converse in Spanish?

25 A Yes.

Rivera - redirect/Tierney

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1 Q You can't write in Spanish; is that fair to say?

2 A Not a proficient level.

3 Q For example, if you had to take this statement in  
4 Spanish, 115A, you couldn't write out all those words,  
5 right?

6 A Correct.

7 Q And that's despite the fact you grew up in a house  
8 where Spanish was spoken, right?

9 A Yes.

10 Q Both of your parents spoke Spanish to you all the  
11 time?

12 A Yes.

13 MS. MACEDONIO: Judge, may I have one moment?

14 THE COURT: Sure.

15 (Pause)

16 MS. MACEDONIO: Judge, no further questions.

17 Thank you.

18 MS. RANTALA: No questions, your Honor.

19 THE COURT: Redirect?

20 MR. TIERNEY: Briefly, your Honor.

21 REDIRECT EXAMINATION

22 BY MR. TIERNEY:

23 Q Detective Rivera, does the Suffolk County Police  
24 Department have a policy with regard to videotaping or  
25 audiotaping confessions taken offsite; in other words,

Rivera - redirect/Tierney

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1 outside of Suffolk County Police building?

2 A No.

3 Q Do you have any training with regard to setting up  
4 audio or video equipment?

5 A No, sir.

6 Q Did you have any audio or video equipment with you on  
7 March 17?

8 A No, sir.

9 Q Now, you were asked questions with regard to your  
10 Spanish.

11 Do you remember those questions?

12 A Yes.

13 Q I believe you indicated on direct examination that  
14 you grew up in a Spanish-speaking household; is that  
15 correct?

16 A Yes.

17 Q Now, when you grew up in that -- when you were born,  
18 what language did your parents teach you to speak?

19 A Spanish.

20 Q How was it that you learned to speak English?

21 A Through school and the neighborhood.

22 Q So as you got older, you went to school, you learned  
23 to speak English?

24 A Yes.

25 Q Did there come a time when your parents learned to

Rivera - redirect/Tierney

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1 speak English?

2 A Yes.

3 Q How did your parents learn how to speak English?

4 A They learned from us.

5 Q "Us," meaning you and your siblings?

6 A Yes.

7 Q You never studied writing Spanish in school; is that  
8 fair to say?

9 A That's correct.

10 Q Now, during the time that you were with the  
11 defendant, did either you or Detective Chase threaten him  
12 in any way?

13 A No, sir.

14 Q Did either you or Detective Chase physically assault  
15 him?

16 A No, sir.

17 Q At any time while you were with the defendant, did he  
18 appear in any manner to be intoxicated?

19 A No, sir.

20 Q Did he appear to have any trouble understanding  
21 either you or Detective Chase?

22 A No, sir.

23 Q And during the course of the interview, were there  
24 times when you translated certain phrases or words into  
25 the Spanish language?

Rivera - redirect/Tierney

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1 A Yes.

2 Q If need be, would you have been available to  
3 translate the entire interview in Spanish?

4 A Yes.

5 MR. TIERNEY: I have nothing further, your  
6 Honor.

7 THE COURT: Ms. Macedonio?

8 MS. MACEDONIO: May I have one second?

9 THE COURT: Sure.

10 (Pause)

11 MS. MACEDONIO: I have no further questions.  
12 Thank you, Judge.

13 THE COURT: You can step down.

14 Can I speak to the lawyers at sidebar?

15 (Continued on the next page.)  
16  
17  
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25

1 (Sidebar.)

2 THE COURT: Who is the next witness?

3 MR. TIERNEY: Detective Haslon. I don't know  
4 where he is exactly.

5 THE COURT: You want to take the lunch break?

6 MR. TIERNEY: Perhaps.

7 THE COURT: Okay.

8

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1 (Sidebar concluded.)

2 (Continued on the next page.)

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1 (In open court.)

2 THE COURT: We are going to take the lunch break  
3 a little earlier today rather than start the next witness.  
4 Why don't we reconvene at ten to 2:00. Don't discuss the  
5 case. Have a good lunch.

6 (The jury leaves the courtroom.)

7 MS. MACEDONIO: Judge, may I make an  
8 observation?

9 THE COURT: Sure.

10 MS. MACEDONIO: When Detective Rivera left the  
11 stand and while the jury was still present, there were  
12 several agents in the courtroom, they shook his hand,  
13 patted him on the back and told him: Good job. I ask  
14 they refrain from doing that with other law enforcements  
15 that take the stand.

16 THE COURT: There shouldn't be any exchanges  
17 like that in the courtroom. I didn't see that. You  
18 shouldn't have those exchanges in the courtroom.

19 MS. MACEDONIO: Thank you.

20 (A luncheon recess was taken.)

21 (Continued on the next page.)

22

23

24

25

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A F T E R N O O N      S E S S I O N

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2  
3  
4           THE COURT: Mr. Durham, is this witness in the  
5 courtroom?

6           MR. TIERNEY: He is outside. I will get him.

7           THE COURT: Sir, if you would state your name  
8 for the record.

9           THE PROSPECTIVE WITNESS HESLIN: Edward Heslin,  
10 H-E-S-L-I-N.

11           THE COURT: Before we bring the jury in, I need  
12 to give you a warning as I gave all witnesses. You are  
13 testifying about the murders, and I'm sure the prosecutors  
14 mentioned this to you as well.

15           I have made the determination that the jury is  
16 not to know the age of Diego Torres, or even the fact that  
17 he was a child.

18           So in your testimony, if you make any reference  
19 to him, you have to use the term that doesn't make  
20 reference to his age in any way. You can refer to him by  
21 his name or a male victim, whatever usual term you want to  
22 use. Understand that?

23           THE WITNESS: Yes.

24           THE COURT: You can sit down and we will bring  
25 in the jury.

**Heslin-Direct/Tierney**

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1 (Whereupon, the jury at this time entered the  
2 courtroom.)

3 THE COURT: Please be seated.

4 The government, please call your next witness.

5 MR. TIERNEY: Certainly, your Honor.

6 The government calls Special Agent Edward  
7 Heslin.

8 THE COURT: Mr. Heslin, please stand while the  
9 oath is being administered.

10

11 E D W A R D H E S L I N,

12 called as a witness, having been first  
13 duly sworn, was examined and testified  
14 as follows:

15 THE CLERK: Please state your name and spell it  
16 for the record.

17 THE WITNESS: Edward Heslin, H-E-S-L-I-N.

18 THE CLERK: Please be seated.

19 THE COURT: Pull your chair close to the  
20 microphone and keep your voice up.

21

22 DIRECT EXAMINATION

23 BY MR. TIERNEY:

24 Q Sir, by whom are you employed?

25 A The FBI.

**Heslin-Direct/Tierney**

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1 Q And do you speak Spanish?

2 A I do.

3 Q How did you learn how to speak Spanish?

4 A I studied the language for five years in school, and  
5 took some advanced college courses. And I worked and have  
6 grown up in the Spanish speaking environment my whole life  
7 here in New York City and elsewhere.

8 Q How long were you employed by the FBI?

9 A 16 years.

10 Q And what was your first assignment within the FBI?

11 A I was assigned to a violent gang task force in New  
12 York City.

13 Q For what year to what year?

14 A From 1997 to the middle of 2002.

15 Q And the violent gang task force that you were  
16 assigned to, were you working with any other agencies?

17 A I was.

18 I was working with the New York City Police  
19 Department and our assignment specifically was Latino  
20 gangs, Latin Kings, with Dominican drug connection.

21 Q Did you have an opportunity to speak Spanish during  
22 this assignment?

23 A Yes. I was operating Spanish language wires, and  
24 operating and recruiting informants in Spanish, monitoring  
25 Spanish language wires. Operating informants in Spanish.

**Heslin-Direct/Tierney**

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1 I was speaking Spanish on a daily basis to witnesses and  
2 taking statements from witnesses in Spanish.

3 Q And after your assignment there ended, where were you  
4 assigned?

5 A In 2002 I was assigned to the joint terrorism task  
6 force, which is a couple of months after the 9/11 attacks.

7 Q And how long did you stay with the joint terrorism  
8 task force?

9 A I was there for about two and a half years.

10 Q Until about June of '04?

11 A Yes.

12 Q And what was your assignment with the joint terrorism  
13 task force?

14 A At that time I worked anti Al-Qaeda matters,  
15 domestically, as well as in Afghanistan, Europe and other  
16 parts of this country.

17 Q And during that approximate two and a half year  
18 period you were with the joint terrorism task force, and  
19 did you have occasion to speak Spanish while working as an  
20 FBI agent?

21 A From time to time, not nearly as often as when I was  
22 assigned to the gang task force.

23 Q After your assignment with the joint terrorism task  
24 force ended, where were you assigned after that?

25 A After that assignment ended I was transferred to the

**Heslin-Direct/Tierney**

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1 San Juan, Puerto Rico office.

2 Q For how long were you assigned to the San Juan,  
3 Puerto Rico office, you mean the FBI office?

4 A Yes.

5 Q How long were you assigned to that office?

6 A June 2004 until September of 2007.

7 Q And what were your duties and responsibilities with  
8 the San Juan office during this approximate three year  
9 period?

10 A In that assignment I was a gang investigator and I  
11 also conducted domestic terrorism investigations.

12 Q And while working on this -- in the San Juan office,  
13 did you have occasion to speak Spanish?

14 A Every day, both work and socially. It is the  
15 language spoken on the Island.

16 Q And once your assignment in Puerto Rico ended in  
17 September of 2007, where were you assigned?

18 A I returned to New York City and I was once again  
19 assigned to the joint terrorism task force.

20 Q And what was your assignment with the joint terrorism  
21 task force this time?

22 A When I returned back to New York, I was assigned the  
23 investigation of Puerto Rican extremist groups, such as  
24 the Macheteros, M-A-C-H-E-T-E-R-O-S and the FALN. And I  
25 also did some work on extremist groups out of South

Heslin-Direct/Tierney

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1 America.

2 Q And did you have occasion while assigned to the joint  
3 terrorism task force during this time to speak Spanish?

4 A Fairly frequently.

5 Q Did there come a time when your assignment with the  
6 joint terrorism task force ended during this time as well?

7 A Yes.

8 Q And when was that?

9 A In June of 2010 I was transferred to Long Island to  
10 work in the Melville, Long Island office because they  
11 required an additional Spanish speaker.

12 Q And what were your duties and responsibilities with  
13 the Long Island office?

14 A Primarily the investigation of MS-13 gang matters.

15 Q And while working -- when did you go to the Long  
16 Island gang task force?

17 A It was June of 2010 when I was assigned.

18 Q Are you presently assigned there as well?

19 A Yes, I am.

20 Q And while working with the Long Island gang task  
21 force, did you have occasion to speak Spanish?

22 A All the time.

23 Q Now, prior to the FBI where were you employed?

24 A I was an attorney with the United States Department  
25 of Justice.



**Heslin-Direct/Tierney**

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1 Q For how long?

2 A About three years.

3 Q And what were your duties and responsibilities within  
4 the Department of Justice for that three-year period?

5 A I primarily worked on cases involving human rights  
6 issues, political asylum, some other immigration matters.

7 Q And the immigration and asylum matters that you dealt  
8 with, where did these refugees, what country were they  
9 from?

10 A They were from all over the world. But the bulk of  
11 them, I would say half the cases were from Guatemala,  
12 El Salvador, some from Honduras.

13 Q While working for the Department of Justice for that  
14 three-year period, did you have the opportunity to speak  
15 Spanish while working?

16 A For the first two years I was there, I would say for  
17 about -- I conducted between three and four interviews  
18 every day of people who were primarily from Central  
19 America. Most of the time those interviews were conducted  
20 without an interpreter. And then my last year was spent  
21 almost entirely in court doing administrative proceedings,  
22 sometimes I spoke Spanish, sometimes not.

23 Q And during the course of your career with both the  
24 FBI and the Department of Justice, were you certified as a  
25 Spanish language speaker?

## Heslin-Direct/Tierney

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1 A Three times.

2 Q And when were -- when were these three times?

3 A In either late 1994, early 1995. I had to sit for a  
4 verbal expression and oral comprehension exam within the  
5 Department of Justice to qualify me to interview and  
6 process Latin American immigrants, which I did qualify  
7 for.

8 Prior to entering on duty as an FBI agent, I had  
9 to sit for a fairly comprehensive exam, written ability,  
10 oral comprehension, verbal expression. And that was  
11 administered in three parts over two days.

12 And then upon my assignment to Puerto Rico, in  
13 order to qualify for that assignment I had to pass another  
14 verbal expression and comprehension exam.

15 Q And during all three occasions when you took these  
16 tests, were you found qualified to speak the Spanish  
17 language?

18 A I was.

19 Q And during the course of your career with both the  
20 FBI and the Department of Justice, have you had the  
21 opportunity to interview Spanish speaking witnesses?

22 A Yes. Maybe hundreds and hundreds of times.

23 Q During the course of your career with both the FBI  
24 and the Department of Justice, did you have the  
25 opportunity to take a written statement from Spanish

Heslin-Direct/Tierney

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1 speaking witnesses?

2 A Yes.

3 Q Approximately how many times?

4 A Maybe a dozen statements over the last ten or fifteen  
5 years.

6 Q And during the course of your career with the FBI,  
7 have you had the opportunity to advise Spanish speaking  
8 defendants of their rights in the Spanish language?

9 A Very frequently.

10 Q Approximately how many times?

11 A Probably several hundred.

12 Q Now, I will call your attention to April 23, 2010.

13 Were you assigned to the Long Island gang task  
14 force on April 23, 2010?

15 A No, I was not.

16 Q Where were you assigned?

17 A I was still assigned to the joint terrorism task  
18 force in Manhattan.

19 Q However, on April 23, 2010, were you working with  
20 members of the Long Island gang task force?

21 A Yes, I was.

22 Q Who were you working with?

23 A I was working with George Davis from the Nassau  
24 County Corrections Department, and Jim Lopez, an FBI agent  
25 assigned to Long Island on the gang task force.

**Heslin-Direct/Tierney**

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1 Q Why were you working with the Long Island gang task  
2 force on April 24th, 2010?

3 A Most of the members of the C-41 gang task force team  
4 had a court appearance that day, including the only  
5 Spanish speaker on that team. And in addition to the  
6 court appearance, they had a prisoner that had to be  
7 picked up in Rikers Island and transferred to Long Island  
8 for FBI processing and presented in federal court for  
9 arraignment.

10 Q And were you asked to participate in that job?

11 A Yes, I was.

12 Q And the individual from Rikers Island that you were  
13 asked to pick up, what was his name?

14 A Heriberto Martinez.

15 Q And did you have any involvement with the FBI's  
16 investigation of Heriberto Martinez prior to April 23,  
17 2010?

18 A Never, no.

19 Q What occurred on April 23, 2010?

20 A I drove to the FBI's Melville, Long Island office and  
21 I met Deputy Davis probably around 9:30, sometime after  
22 rush hour.

23 We then got into his vehicle and drove to Rikers  
24 Island. And at that point Deputy Davis entered a sally  
25 port, basically he entered the jail. And a few minutes

Heslin-Direct/Tierney

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1 later he exited the jail with Mr. Martinez in handcuffs.

2 Q Do you see Mr. Martinez in the courtroom today?

3 A Yes.

4 Q And would you please point him out and identify an  
5 article of his clothing?

6 A Mr. Martinez is sitting third from the end of the  
7 table, white colored shirt and a gray sweatshirt, staring  
8 back at me.

9 MR. TIERNEY: May the record reflect the witness  
10 identified the defendant Heriberto Martinez?

11 THE COURT: Yes.

12 Q Now, once the defendant emerged from Rikers Island,  
13 what happened?

14 A George Davis walked him over to the vehicle and he  
15 placed and handcuffed him in the back seat of the car on  
16 the passenger side.

17 Q And where was everyone situated within the car?

18 A I was also in the back seat on the driver's side, and  
19 Deputy Davis was in the front seat driving.

20 Q And where were you going from Rikers Island?

21 A We were leaving Rikers Island and driving to the  
22 Melville, Long Island FBI office.

23 Q For what reason?

24 A Umm, Mr. Martinez was under FBI arrest, and all the  
25 FBI arrests have to be processed in our office, we take

**Heslin-Direct/Tierney**

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1 their fingerprints, photographs, voucher their property  
2 and we advise them of their rights and take a statement if  
3 they want to give a statement.

4 Q How long did it take for you to get from Rikers  
5 Island to the FBI office in Melville?

6 A Maybe half an hour.

7 Q What if anything occurred during the car ride?

8 A Initially not much happened. We were all kind of  
9 quiet. At some point Mr. Martinez asked where we were  
10 going, what was going on. And I explained he was being  
11 processed as an arrest. And he expressed surprise at  
12 that, because he indicated he was already under arrest and  
13 he had given the police a statement about a murder and  
14 provided details about that murder and its participants.

15 Q Did you explain to him who you work for?

16 A I did. I told him I was an FBI agent. And he was  
17 being arraigned federally on a new charge.

18 Q Did there come a time when you in fact arrived with  
19 the defendant at the FBI office in Melville?

20 A Yes.

21 Q What happened once you and Deputy Davis arrived with  
22 the defendant at the Long Island FBI office?

23 A Deputy Davis and I escorted Mr. Martinez upstairs and  
24 we began processing.

25 Q And did there come a time that you advised the

Heslin-Direct/Tierney

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1 defendant of his rights?

2 A Yes.

3 Q When did that occur in relation to when you arrived  
4 at the location?

5 A Shortly thereafter. We only had been -- had a very  
6 short amount of time. We had to transport him to Central  
7 Islip for processing by pretrial and the marshal's office  
8 and subsequently for arraignment. Probably within 10 or  
9 15 minutes from arriving.

10 Q Did you question him prior to reading him his rights?

11 A No, we did not question him.

12 Q When you read him his rights -- did you advise him of  
13 his rights that day?

14 A Yes.

15 Q And how did you read him his rights, did you recite  
16 them from memory or did you read it off a particular  
17 document?

18 A We have an advice of rights form and a Spanish  
19 translation of the form. I read him the rights from that  
20 form in Spanish.

21 Q I will show you what is previously marked as  
22 Government's Exhibit 128 for identification.

23 (Handed to the witness.)

24 I will ask you if you recognize that document.

25 A Yes, I do.

**Heslin-Direct/Tierney**

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1 Q And what do you recognize the document to be?

2 A It is the advice of rights form in Spanish that we  
3 executed that day.

4 Q And is that the original of the advice of rights  
5 document that you used to advise the defendant of his  
6 rights on April 23?

7 A Yes, it is.

8 Q And is it -- how do you recognize it as such?

9 A Well, it says notification of rights in Spanish. It  
10 has my signature and Mr. Martinez' signature and James  
11 Lopez' signature on the bottom.

12 Q That document, is that the original of that document?

13 A Yes.

14 Q And is that document the same or substantially the  
15 same condition it was in after you executed it with the  
16 defendant on April 23?

17 A Yes, it is.

18 MR. TIERNEY: Your Honor, I move  
19 Government's Exhibit 128 in evidence at this time.

20 MS. MACEDONIO: No objection.

21 MS. RANTALA: No objection.

22 THE COURT: 128 is admitted.

23 (Whereupon, Government's Exhibit 128 was  
24 received in evidence.)

25 Q Can you see that on the screen?



**Heslin-Direct/Tierney**

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- 1 A Yes.
- 2 Q What is at the top of Government's Exhibit 128?
- 3 A It is notification of rights.
- 4 Q To the right of that, what does it say?
- 5 A There are three lines, place, date and hour.
- 6 Q And did you place -- what does it say?
- 7 A It says LIRA, which is Long Island Resident Agency.
- 8 Q And what is next underneath that?
- 9 A The date.
- 10 Q What is the date?
- 11 A The date on the form is 4/22/10. April 22, 2010.
- 12 Q Is that a mistake?
- 13 A Yes, a mistake.
- 14 Q And underneath that, is that the hour?
- 15 A The time.
- 16 Q And what time is that?
- 17 A 11:00 a.m.
- 18 Q Who placed that there?
- 19 A I did.
- 20 Q And that 11:00 a.m., what does it reflect?
- 21 A That is the point where I basically take the form out
- 22 and begun the notification process.
- 23 Q How did you advise the defendant of his rights on
- 24 April 23?
- 25 A I asked him if he understood Spanish well enough to

## Heslin-Direct/Tierney

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1 read it. And he indicated he did so. I then read him the  
2 form. And I then had him read the form. I then went  
3 through the form paragraph by paragraph and had him  
4 initial each one of the rights.

5 Q After you read the form to him and you gave -- when  
6 you gave the defendant the form, did he read it out loud?

7 A No. I think he read it to himself.

8 Q Did he appear to be reading it?

9 A Yes.

10 Q After those two things happened, you indicated you  
11 went through the document line by line?

12 A Yes.

13 Q And at the top it says S-U-S, D-E-R-E-C-H-O-S.

14 What does that mean in English?

15 A Your rights.

16 Q And did you begun reading it line by line?

17 A Yes.

18 Q The first line at the top of the document up here,  
19 does that begin with the word A-N-T-E-S; what does that  
20 mean in English?

21 A It means before.

22 Q And what does that entire statement mean?

23 A Before formulating any question, you must understand  
24 your rights.

25 Q And then what did you read next?

Heslin-Direct/Tierney

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1 A And then we went through each right. The first one  
2 being, you have the right to maintain silence.

3 Q And after you read that right to the defendant, what  
4 did you ask him to do?

5 A I asked him if he understood it, and I asked him to  
6 initial it. And he did.

7 Q And the HM, who placed that on the document?

8 A Boxer, the defendant, Mr. Martinez.

9 Q And after that right was read to him, did you read a  
10 second right?

11 A Yes, I did.

12 Q And that second right on the document, what does that  
13 mean in English?

14 A It says anything that you say can be used against you  
15 in a court.

16 Q And after you read him that right, what did you do?

17 A I asked him again to initial afterwards.

18 Q And the second from the top, the HM, is that the  
19 defendant who initialed that?

20 A Yes.

21 Q And after he initialed the documents the second time,  
22 did you read him the third right below it?

23 A Yes.

24 Q What does that right mean in English?

25 A It means you have the right to consult with an

## Heslin-Direct/Tierney

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1 attorney. And he can counsel you prior to us asking you  
2 any questions. You also have a right for an attorney  
3 present during the questioning.

4 Q After that right what did you do next?

5 A Had him initial it.

6 Q The HM, the defendant put it there?

7 A Yes.

8 Q And after you read that sentence to him, what did you  
9 do next?

10 A We moved on to the next right.

11 Q The one just beneath it?

12 A Yes.

13 Q What does that mean in English?

14 A If you are not able to pay the cost for an attorney,  
15 one will be assigned to you before beginning any  
16 questioning if you so desire.

17 Q After you read that right to him, what did you do?

18 A Had him initial it.

19 Q After you read that sentence to him, what happened  
20 next?

21 A We moved on then to the next right.

22 Q The one below it?

23 A Yes.

24 Q What does that right mean in English?

25 A If you decide to answer questions now without the

## Heslin-Direct/Tierney

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1 presence of an attorney, you still have the right to stop  
2 answering questions at any moment.

3 The next sentence is a redundancy. You also  
4 have the right to stop questioning at any time.

5 Q And after you read that right to him, what did you  
6 have the defendant to?

7 A I had him initial it again.

8 Q And then after you read him that right, what happened  
9 next?

10 A I read the bottom paragraph. And he signed. And  
11 then Agent Lopez and I signed.

12 Q That bottom paragraph which begins with H-E. What  
13 does that -- what does that paragraph mean in English?

14 A I have read this statement of my rights and I  
15 understand it. I am disposed to make a statement and to  
16 answer questions without the presence of an attorney.

17 Q After you read that sentence to the defendant, what  
18 did you have him do?

19 A I had him sign next to where it says F-I-R-M-A, which  
20 means signature.

21 Q And that writing next to that is the defendant's  
22 signature?

23 A That was the signature he made on that day, yes.

24 Q And then directly underneath that, is that your  
25 signature?

Heslin-Direct/Tierney

1062

1 A Yes, it is.

2 Q And directly underneath your signature, is that Agent  
3 Lopez' signature?

4 A Yes, it is.

5 Q And then 11:12 a.m., what is that?

6 A I looked at the clock when we were done. 11:12, that  
7 is the time.

8 Q And did you write that 11:12 there?

9 A Yes, I did.

10 Q All right.

11 Now, once the defendant was apprised of his  
12 rights and waived them, did you have a conversation with  
13 him?

14 A We did.

15 Q What was the defendant's demeanor like during your  
16 conversation with him?

17 A He was very pleasant. He was articulate. Again, he  
18 indicated he already gave a statement about a murder to  
19 the police. I asked him if he knew about any other  
20 murders, is he willing to talk about that.

21 Q During the conversation did he tell you what his  
22 nickname was?

23 A Yes.

24 Q What did he tell you?

25 A They call him Boxer in the MS-13 gang.

**Heslin-Direct/Tierney**

1063

1 Q And did he discuss with you whether or not he was a  
2 member of a particular street gang?

3 A He indicated he was part of a Clique or subset of the  
4 MS-13 gang known as the Coronados.

5 Q And during the course of your conversation with the  
6 defendant, did you talk to him with regard to the  
7 commission of a murder of a bouncer in Nassau County?

8 A Yes, I did.

9 Q And what did the defendant tell you with regard to  
10 the commission of that murder?

11 A Boxer indicated that he and a group of other MS-13  
12 gang members went to a club in Hempstead, and while they  
13 were at the club one of the other MS-13 gang members ended  
14 up in an altercation with the bouncer. As a result of  
15 this altercation, the bouncer went to expel the MS-13 gang  
16 member outside of the club. During this process the gang  
17 member threatened the bouncer, identified himself as an  
18 MS-13 gang member verbally and through the use of hand  
19 signs, and also told the bouncer that nobody touches an  
20 MS-13 gang member.

21 Q And did there come a time -- withdrawn.

22 Did the defendant indicate as to whether he ever  
23 returned to that bar?

24 A Yes, he did.

25 Q What did he say with regard to that?

## Heslin-Direct/Tierney

1064

1 A He explained that on a later date he and a group of  
2 other MS-13 members drove back to the area of Hempstead  
3 where this occurred. He then identified both the club and  
4 the bouncer to an individual member, a gang member in the  
5 car that had a gun. And this person then went, shot the  
6 bouncer in the head, killing him, basically in retaliation  
7 for the prior removal of the MS-13 gang member from the  
8 bar.

9 Q And when the defendant said -- you used the word he  
10 identified both the club and the bouncer, who is he?

11 A Boxer identified both the club and the bouncer to the  
12 MS-13 member in the car that had the gun.

13 Q That is what he told you?

14 A Yes. That is what he told me.

15 Q Now, did you also have a conversation with the  
16 defendant with regard to a double homicide that occurred  
17 in Suffolk County?

18 A Yes, I did.

19 Q And what, if anything, did the defendant tell you  
20 about the commission of that homicide?

21 A Boxer told me that he received a call prior to the  
22 homicide from a fellow MS-13 gang member. This gang  
23 member called him looking to acquire a gun that the MS-13  
24 gang had used in several other homicides.

25 Q And did this particular MS-13 gang member, did he



## Heslin-Direct/Tierney

1065

1 tell Boxer why he wanted to use the gun?

2 A He did.

3 He indicated that he was involved in a  
4 relationship with a woman who he believed was setting him  
5 up for an assault by a rival gang. And because of that he  
6 wanted to kill the woman.

7 Q And did he -- according to Boxer did this MS-13  
8 member ever tell him whether or not this individual was  
9 ever killed?

10 A He did.

11 First, prior to that Boxer indicated he didn't  
12 actually have possession of the weapon. But he did direct  
13 the person, the other MS-13 gang member, how to contact  
14 the person who did have the gun.

15 Subsequent to that, this person did in fact  
16 commit a double homicide and then later contacted Boxer  
17 and two other people.

18 Q And did Boxer indicate whether or not he had any  
19 involvement with any of the murderers subsequent to the  
20 murder?

21 A Yes, subsequent to the murder Boxer harbored the  
22 three assailants involved in the homicide and hid them in  
23 his house while they were arranging to flee the country.

24 Q What if anything happened with regard to those three  
25 individuals who committed the double homicide?

**Heslin-Direct/Tierney**

1066

1 A They did in fact successfully manage to flee the  
2 country.

3 Q Where did they go?

4 A They went to El Salvador.

5 Q Now, approximately how long did this conversation  
6 last?

7 A It was short, maybe 30 minutes.

8 Q And did there come a time when the conversation was  
9 terminated?

10 A Yes.

11 Q And why was that?

12 A Because Agent Lopez had to get the defendant over  
13 here to Central Islip so he can be processed by the  
14 marshals and by pretrial and presented for arraignment,  
15 and we were running short on time.

16 Q Now, with regard to your conversation with the  
17 defendant, did you take notes of that conversation?

18 A Yes, I did.

19 Q What happened to those notes?

20 A Those notes have been lost.

21 Q Now, did you also reduce the sum and substance of  
22 your conversation with the defendant to a report?

23 A It was done that very day.

24 Q And the notes that -- did you use the notes to make  
25 the report?

Heslin-Direct/Tierney

1067

1 A Yes, I did.

2 What I did was subsequent to Boxer being  
3 transported to Central Islip by Agent Lopez, I went  
4 immediately to a computer and began typing out the report.

5 I wasn't assigned out here at that time. And it  
6 wasn't clear when -- if I would ever be back, and I needed  
7 to get it done that day.

8 What I did was, and what I always do with my  
9 reports and what I have done with all of them for the last  
10 16 years, is take my notes, I take statements from the  
11 notes and I type them into the report. As that occurs, I  
12 cross it out. As all the statements on the notepad are  
13 crossed out, the report is done. And that is what was  
14 done in this case.

15 Q I will show you -- would you recognize what is marked  
16 as Government's Exhibit 3500-EH-2 for identification?

17 (Handed to the witness.)

18 Q Do you recognize that?

19 A Yes, I do.

20 Q What do you recognize that to be?

21 A It is the 302 report that I prepared to memorialize  
22 the interview of Boxer the date we arrested him.

23 Q Are there mistakes in that report?

24 A There are two typographical errors.

25 Q And what are they, the typographical errors?

**Heslin-Direct/Tierney**

1068

1 A I identified the date of the identification and the  
2 date of the interview as having occurred on April 22, when  
3 in fact they occurred on April 23.

4 Q And when did you make that report? When did you  
5 begin to write that report?

6 A I mean that very day, immediately after the  
7 interview.

8 Q Is there a date of transcription on that report?

9 A The final date of transcription is July 13, 2010.

10 Q And why is the date of the transcription that July  
11 date?

12 A Because that is the date that the report was  
13 finalized. I came back out to Long Island to basically  
14 reconcile the dates. Unfortunately I reconciled it back  
15 to the wrong date, April 22 instead of April 23.

16 MR. TIERNEY: Thank you, no further questions of  
17 the witness.

18 THE COURT: Thank you.

19 Cross-examination.

20

21

22

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Heslin-Cross/Macedonio

1069

1 CROSS-EXAMINATION

2 BY MS. MACEDONIO:

3 Q Good afternoon, Agent Heslin.

4 A Good afternoon.

5 Q You were not assigned to the gang task force in April  
6 of 2010; is that correct?

7 A That's correct.

8 Q Okay.

9 So you were called in primarily because not only  
10 were you an FBI agent but you were fluent in Spanish; is  
11 that correct?

12 A Yes.

13 Q And you needed to go to Rikers Island with Deputy  
14 Davis to pick up Mr. Martinez?

15 A Yes.

16 Q That was to be your assignment for the day?

17 A That was it.

18 Q And how was it communicated to you that Mr. Martinez  
19 spoke Spanish? Was it communicated to you?

20 A Yes.

21 Q And that is why you were there?

22 A Yes.

23 Q And no one communicated to you that Mr. Martinez also  
24 spoke English; is that correct?

25 A I don't think so, that's correct.

Heslin-Cross/Macedonio

1070

1 Q And you had time to interact with Mr. Martinez on  
2 April 23, 2010; is that correct?

3 A Yes.

4 Q And overall, how long would you say you were with  
5 him?

6 A An hour and a half, two hours, max.

7 Q And you were conversing with him; is that right?

8 A Yes.

9 Q And was it clear to you that he spoke Spanish?

10 A It was very clear to me, yes.

11 Q Did you have an understanding that he can speak in  
12 English?

13 A My feeling is that he can communicate at some minimum  
14 level in English. But Spanish was definitely his primary  
15 language.

16 Q Right.

17 And when you were conducting your interview or  
18 otherwise talking to Mr. Martinez, you thought it prudent  
19 to do that in Spanish; is that correct?

20 A Absolutely.

21 Q So, for example, when you gave him his Miranda  
22 rights, you used the Spanish form; is that correct?

23 A Yes.

24 Q You didn't ask him to read anything in English,  
25 right, you gave him the Spanish form and asked him to do

Heslin-Cross/Macedonio

1071

1 that, read that?

2 A Yes.

3 Q And you just testified that you had lost your notes  
4 in this case; is that right?

5 A That's right.

6 Q Okay.

7 And there are some mistakes on your report; is  
8 that correct?

9 A Two typographical errors.

10 Q All right.

11 And you testified that you have a routine where  
12 you use your notes, you make your 302, or the report, and  
13 you cross the notes out as you go?

14 A Yes.

15 Q But despite that you made a mistake on this report;  
16 is that correct?

17 A That's right.

18 Q And then you came back after to correct it, and you  
19 actually made the same mistake again. Is that correct?

20 A Yes.

21 Q And then your notes you have with regard to the  
22 interview, they just disappeared; is that right?

23 A I don't know if they just disappeared, but I don't  
24 have them.

25 Q Well, we don't have them now, right?

Heslin-Cross/Macedonio

1072

1 A That's right.

2 Q You don't have possession of them; is that right?

3 A That's right.

4 Q Certainly you looked for them, didn't you, Agent  
5 Heslin?

6 A You can't believe how much I looked for them.

7 Q Okay.

8 But it is fair to say you didn't find them?

9 A Fair to say.

10 Q When you picked up Mr. Martinez, did you know  
11 anything about the case he was about to be arraigned on?

12 A No, I really didn't. I believe I knew him as a -- it  
13 as a murder ahead of time. Beyond that, I didn't know  
14 much else.

15 Q And you were picking him up from Rikers Island, so  
16 you understood there was a charge pending; is that  
17 correct?

18 A Yes.

19 Q And you had been in the FBI for how long at that  
20 point, 13 years?

21 A 15 years at that point. Maybe 13.

22 Q Two years ago now?

23 A Yes.

24 Q And before that you were with the Department of  
25 Justice, did you say?



Heslin-Cross/Macedonio

1073

1 A Yes, I was.

2 Q And you were an attorney from the Department of  
3 Justice; is that correct?

4 A Yes.

5 Q So you clearly understood when you picked up  
6 Mr. Martinez in Rikers Island, knowing he had a pending  
7 case, that he must have had an attorney; is that correct?

8 A I'm sure whatever the pending case in the state  
9 system is, that there was an attorney representing him in  
10 that case.

11 Q When you read him this form when it says if he wants  
12 an attorney, and one will be appointed to you, you didn't  
13 say to him you already have an attorney, do you want that  
14 person to come out and help you fill out the forms?

15 A I have never done it in 16 years.

16 Q You knew he had a lawyer, right?

17 A I'm assuming he had a lawyer in the state charge.

18 Q You know that is the law, you are a lawyer; is that  
19 right?

20 A Yes.

21 MR. TIERNEY: Objection.

22 THE COURT: Overruled.

23 Q Did you reach out and try to make any contact with  
24 Mr. Martinez' lawyer before you decided to question him?

25 A I actually didn't question him. He kind of blurted

Heslin-Cross/Macedonio

1074

1 stuff out.

2 Q Well, you testified at another proceeding in this  
3 matter; is that right?

4 A Yes, I did.

5 Q And in that testimony did you not say, I asked him if  
6 there was anything he would like to talk to us about? Did  
7 you say that?

8 A Yes, I did.

9 Q And when you say you didn't question him, you read  
10 him or gave him these Miranda warnings because you wanted  
11 to talk to him, right?

12 A Exactly right.

13 Q You didn't just do this because you were processing  
14 him. You wanted to ask him some questions?

15 A Well, that is part of the processing procedure, the  
16 standard part.

17 Q Okay.

18 But you did question him, you said, hey,  
19 anything else you want to tell us, right?

20 A Absolutely.

21 Q Now, you testified after Mr. Martinez waived his  
22 Miranda warnings, that he started to give you information  
23 about two particular incidents; is that right?

24 A There were at least two incidents we discussed.

25 Q You testified about the El Rancho murder; is that

Heslin-Cross/Macedonio

1075

1 right?

2 A The one in Hempstead?

3 Q Yes.

4 A Yes.

5 Q And you also testified about the double homicide as  
6 well?

7 A Yes.

8 Q And even though you didn't know anything about the  
9 case, at this point you are an experienced FBI agent; is  
10 that right?

11 A Yes.

12 Q So you understood that, gee, perhaps this gentleman  
13 has something important to offer you, although I don't  
14 know anything about the case, he is talking, right?

15 A Yes.

16 Q And then you testified that despite the fact that  
17 Mr. Martinez was giving information about what you would  
18 understand to be very significant cases, you rushed him  
19 out the door and took him to Central Islip for  
20 arraignment; is that right?

21 A I was desperate to keep him talking. I was told he  
22 had to be presented and so he had to go.

23 Q I'm placing before you what is marked as 3500-CM-5.

24 Do you recognize that document?

25 A Yes.

Heslin-Cross/Macedonio

1076

1 Q What is that document?

2 A A waiver of speedy arraignment.

3 Q What does a waiver of speedy arraignment do?

4 A It allows the subject to waive arraignment and gives  
5 us time to interview him, or whatever we have to do, to  
6 make arrangements with an attorney and with the  
7 government.

8 Q For example, if the FBI were questioning someone and  
9 they were giving very important information about  
10 homicides but they needed to get to court to be arraigned,  
11 you can have that person execute a waiver of speedy  
12 arraignment and they can stay in the FBI office and  
13 continue to talk to you; is that right?

14 A As you showed me, this form here, on this form, this  
15 is for the case agent on this matter. I was not the case  
16 agent for that matter. So it was not within my authority  
17 to keep him or even ask for him to be kept.

18 Q Understood.

19 But this is something available to the FBI when  
20 they are questioning someone; is that correct?

21 A Yes.

22 Q And it is also something done routinely, correct, the  
23 defendants can waive speedy arraignment and they can  
24 continue to talk to you about something you were  
25 interested in pursuing; is that correct?

Heslin-Cross/Macedonio

1077

1 A It is an option available.

2 Q It is an option available and certainly the FBI  
3 employs it?

4 A The FBI doesn't employ it without speaking with the  
5 assistant and the concurrence of the assistant.

6 In this instance I didn't know who the  
7 assistants on this case were.

8 Q In this instance it was not done; is that right?

9 A No.

10 Q It was not done?

11 A No.

12 Q Now, the statement you claim you took from  
13 Mr. Martinez, you didn't have -- you didn't have him write  
14 it out in his own hand, did you?

15 A No, I did not.

16 Q You wrote those out on your notes which you have now  
17 lost; is that correct?

18 A That's correct.

19 MS. MACEDONIO: May I have a moment?

20 THE COURT: Sure.

21 (Whereupon, at this time there was a pause in  
22 the proceedings.)

23 MS. MACEDONIO: No further questions. Thank  
24 you, your Honor.

25 THE COURT: Ms. Rantala, anything?

**Heslin-Redirect/Tierney**

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1 MS. RANTALA: No, your Honor.

2 THE COURT: Redirect?

3 MR. TIERNEY: Yes, your Honor.

4

5 REDIRECT EXAMINATION

6 BY MR. TIERNEY:

7 Q Agent Heslin, you testified that you picked the  
8 defendant up from Rikers Island; is that correct?

9 A Yes.

10 Q And Rikers Island is a city jail?

11 A Yes.

12 Q And it houses -- it houses prisoners being prosecuted  
13 in what jurisdiction?

14 A New York City primarily.

15 Q And what was your understanding of what murder the  
16 defendant was in custody for?

17 A My understandings is that he was in custody for a  
18 murder that occurred in Queens.

19 Q And the murder of the bouncer, where did that occur?

20 A That occurred in Hempstead, here in Nassau County,  
21 Long Island.

22 Q And did the defendant have an attorney on April 23  
23 for his Nassau County charges?

24 A No, he did not.

25 Q And the murder that occurred, the double homicide,

Heslin-Redirect/Tierney

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1 where did that occur?

2 A It occurred in Suffolk County, Long Island.

3 Q On April 23, did this defendant have an attorney for  
4 his Suffolk County charges?

5 A No, he did not.

6 MR. TIERNEY: Thank you.

7 MS. MACEDONIO: That's all I have.

8 THE COURT: You can step out.

9 (Whereupon, the witness leaves the witness  
10 stand.)

11 THE COURT: Why don't we take the afternoon  
12 break now so we can go straight through to 4:30 with the  
13 next witness.

14 Please do not discuss the case.

15 (Whereupon, at this time the jury leaves the  
16 courtroom.)

17 THE COURT: Please be seated.

18 Who is the next witness?

19 MR. DURHAM: We are trying to figure it out. We  
20 have a couple of scheduling issues right now. One of the  
21 witnesses has to leave by 3:30. We may call them out of  
22 order.

23 THE COURT: I didn't realize. Do I need to give  
24 the warning to the next witness?

25 MR. DURHAM: No, your Honor. She will be

**Heslin-Redirect/Tierney**

1080

1       testifying about the El Rancho, Hempstead murder.

2               THE COURT: She has to be out by 3:30?

3               MR. DURHAM: Yes.

4               THE COURT: Try to keep this one for ten minutes  
5 then.

6

7               (Whereupon, a recess was taken.)

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1081

1 THE COURT: Ready for the jury?

2 MR. DURHAM: We are, your Honor.

3 THE COURT: So I know for the next witness, you  
4 say she will be short, and we can go right to the next  
5 witness?

6 MR. DURHAM: Yes.

7 The next witness will be Joseph Marino, and then  
8 Sonya Ventura.

9 THE COURT: Do we need to stop?

10 MR. DURHAM: No, your Honor.

11 There will be an additional witness later in the  
12 trial who has information about multiple murders, these  
13 witnesses are not on that murder.

14 THE COURT: All right.

15 Let's bring in the jury.

16 Is the jury here -- the witness here?

17 MR. DURHAM: Yes, your Honor.

18 THE COURT: Please bring her in.

19 Please have a seat, ma'am, while we bring the  
20 jury in.

21 (Whereupon, the jury at this time entered the  
22 courtroom.)

23 THE COURT: Please be seated.

24 Who is the government's next witness?

25 MR. DURHAM: Your Honor, the government calls

Herrera-Direct/Durham

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1 Jessica Herrera, H-E-R-R-E-R-A.

2 THE COURT: Please stand while the oath is  
3 administered.

4

5 J E S S I C A H E R R E R A,

6 called as a witness, having been first  
7 duly sworn, was examined and testified  
8 as follows:

9 THE COURT: Please be seated. Please state your  
10 name for the record and spell your last name.

11 THE WITNESS: H-E-R-R-E-R-A.

12 THE COURT: State your first name.

13 THE WITNESS: Jessica Herrera.

14 THE COURT: Ms. Herrera, I will ask you to sit  
15 very close to the microphone and keep your voice up so the  
16 whole courtroom can hear you, okay?

17 THE WITNESS: Yes.

18 THE COURT: Mr. Durham.

19 MR. DURHAM: One moment, your Honor.

20 (Counsel confer.)

21

22 DIRECT EXAMINATION

23 BY MR. DURHAM:

24 Q Good afternoon. How old are you?

25 A 26.

Herrera-Direct/Durham

1083

- 1 Q Right now are you working or going to school?
- 2 A Yeah, I'm going to school.
- 3 Q What are you going to school for?
- 4 A Criminal justice.
- 5 Q Back in March of 2010, were you working then?
- 6 A Yes.
- 7 Q And where were you working?
- 8 A Rancho Bar.
- 9 Q Is that the El Rancho, R-A-N-C-H-O, Bar?
- 10 A Yes.
- 11 Q And where was that located?
- 12 A In Hempstead.
- 13 Q And what did you do at El Rancho?
- 14 A I was a bartender.
- 15 Q And approximately how long did you work there?
- 16 A Umm, six months, five or six months.
- 17 Q Do you remember when you stopped working there?
- 18 A After what happened, the incident that happened in
- 19 the bar, I stopped working there.
- 20 Q And when you say the incident, what are you referring
- 21 to?
- 22 A After David got shot.
- 23 Q All right.
- 24 Who is David?
- 25 A The security guard.

Herrera-Direct/Durham

1084

1 Q Is that David Moreno?

2 A Yes.

3 Q And what did David -- did David work at the bar?

4 A Yes.

5 Q He was a security guard?

6 A Yes.

7 Q For how long did you know him?

8 A For the time he was working there.

9 Q A period of months?

10 A Yes.

11 Q I put a photograph in front of you that is marked as  
12 Government's Exhibit 337.

13 Do you recognize that?

14 A Yes.

15 Q And what is it?

16 A That is David.

17 Q That is a photograph of him?

18 A Yes.

19 Q And is that a fair and accurate depiction of the way  
20 he looked?

21 A Umm, yeah.

22 MR. DURHAM: Your Honor, at this time the  
23 government offers Exhibit 337.

24 MS. MACEDONIO: No objection.

25 MS. RANTALA: No objection.

Herrera-Direct/Durham

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1 THE COURT: 337 is admitted.

2 (Whereupon, Government's Exhibit 337 was  
3 received in evidence.)

4 MR. DURHAM: Thank you, your Honor.

5 May I publish?

6 THE COURT: Yes.

7 (At this time a document was exhibited on  
8 courtroom screen.)

9 Q Ms. Herrera, looking at the screen in front of you,  
10 is that the photograph you knew of the person named David  
11 Moreno?

12 A Yes.

13 Q And I want to direct your attention to February of  
14 2010.

15 Was there a night you were working where there  
16 was a problem at the El Rancho Bar?

17 A Yes.

18 Q And was David Moreno also working that night?

19 A Yes.

20 Q And approximately how long did that occur before he  
21 was murdered?

22 A It was like maybe two weeks before.

23 Q About two weeks?

24 A Yes.

25 Q Okay.

## Herrera-Direct/Durham

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1 Can you explain to the jury what happened that  
2 night?

3 A Umm, well, it was four guys, and they -- he didn't  
4 want them to be there. And I'm not sure if it was 20 or  
5 40 dollars, and they made it into a big deal and wouldn't  
6 pay. And David came, and I told him they didn't want to  
7 pay me. And they started to just screaming.

8 Q They were screaming?

9 A Yes, at David.

10 Q What types of things were they screaming?

11 A I don't remember.

12 Q And the dispute was over the bar bill?

13 A Yes.

14 Q And at any point did the dispute turn physical?

15 A Umm, after David closed the door and one of them  
16 tried to just get out. They got into a big argument, and  
17 we don't remember, but one of them -- I don't remember,  
18 but one of them just took a knife out. And David came and  
19 took his pepper spray out and he started spraying them.

20 Q He had a canister of pepper spray?

21 A Yes.

22 Q And he sprayed it at the men when he was having a  
23 problem?

24 A Yes.

25 Q When he sprayed them, what if anything did the men

Herrera-Direct/Durham

1087

1 say?

2 A One of them said, I'm going to come back.

3 Q They said they were going to come back?

4 A Yes.

5 Q And the four men you described who had the  
6 altercation with David, would you recognize them if you  
7 saw them today?

8 A No, I wouldn't recognize them.

9 Q But generally how did they look?

10 A They were dressed with like -- they were like light  
11 skin.

12 Q Could you tell what race they were?

13 A Spanish.

14 Q Approximately how old were they?

15 A In their 20's.

16 Q 20's?

17 A Yes.

18 Q And how did you say they were dressed?

19 A With hoodies.

20 Q And during the course of that night, did you observe  
21 any of the individuals use hand signs?

22 A I don't remember.

23 Q You don't remember, okay.

24 Did they say anything that led you to believe  
25 they might be gang members?

Herrera-Direct/Durham

1088

1 A I don't remember that exactly.

2 Q Okay.

3 I want to jump ahead to March 6th of 2010.

4 Were you working that night?

5 A Yes.

6 Q And approximately how many other people were working  
7 that night?

8 A I'm not sure, but I think there were like six others  
9 there, or seven of us. I'm not sure.

10 Q What about David, was he working that night?

11 A Yes.

12 Q And directing your attention to a little after  
13 11:00 o'clock that evening, what, if anything, happened?

14 A There was music on, so I couldn't hear anything. I  
15 heard a gunshot, and then David just fell.

16 Q So you heard a gunshot?

17 A Yes.

18 Q And then you looked over, and what did you see?

19 A I seen David laying down on the floor.

20 Q David was on the floor?

21 A Yes.

22 Q And after you saw him on the floor, what did you do  
23 next?

24 A We all ran to him.

25 Q When you ran to him, how did he look?



Herrera-Direct/Durham

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1 A With all blood.

2 Q Could you tell where the blood was coming from?

3 A His forehead.

4 Q Approximately where?

5 A Right here (indicating).

6 MR. DURHAM: Your Honor, for the record, the  
7 witness is indicating the center of the forehead, right  
8 between the eyes.

9 THE COURT: Yes.

10 Q You went over to try to help him and he was bleeding.

11 What did you do then?

12 A One of the girls called the police. And they didn't  
13 talk English so I had to talk for them.

14 Q So you spoke to the police?

15 A Yes.

16 Q And were you able to see who shot David?

17 A No.

18 Q And when you went over to him and he was bleeding,  
19 was he still alive?

20 A Yes.

21 Q Was he saying anything?

22 A He was crying.

23 MS. MACEDONIO: Objection.

24 THE COURT: Sustained.

25 Q I will ask you to look at a document I placed before

Herrera-Direct/Durham

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1 you labeled Government's Exhibit 325.

2 Do you recognize that?

3 A Yes.

4 Q And what is it?

5 A It is the bar.

6 Q Is that essentially a sketch or a schematic of the  
7 bar?

8 A Yes.

9 Q Is that an accurate representation of the way the bar  
10 was set up that evening?

11 A Yeah.

12 MR. DURHAM: Your Honor, the government will  
13 offer Exhibit 325.

14 MS. MACEDONIO: No objection, your Honor.

15 MS. RANTALA: No objection.

16 THE COURT: 325 is admitted.

17 (Whereupon, Government's Exhibit 325 was  
18 received in evidence.)

19 MR. DURHAM: May I publish, your Honor?

20 THE COURT: Yes.

21 (At this time a document was exhibited on  
22 courtroom screen.)

23 Q Ms. Herrera, are you able to see that in front of  
24 you?

25 A Yes.

Herrera-Direct/Durham

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1 Q And looking at that floor plan, could you show the  
2 jury approximately where the front door of the bar is?

3 A It is right here (indicating).

4 Q If you can describe it.

5 A It is by the words -- by the dance floor, kind of.

6 Q Okay.

7 Looking at the bar, it is a rectangular shape,  
8 right?

9 A Yes.

10 Q Is it fair to say it is at the bottom right-hand  
11 corner?

12 A Yes.

13 Q And that is the front door?

14 A Yes.

15 Q And then looking at the schematic, could you explain  
16 to the jury approximately where you are standing when you  
17 heard the gunshot?

18 A By the bar.

19 Q And the bar, is it fair to say that is in the top  
20 left-hand quadrant of the floor plan?

21 A Yes.

22 Q And so you were standing by the bar?

23 A Yes.

24 Q And when you saw David -- you heard the shot and you  
25 looked and you saw David on the ground?

Herrera-Direct/Durham

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1 A Yes.

2 Q Approximately where was he?

3 A By the door -- by the dance floor here kind of.

4 Q Inside the bar or out?

5 A Inside the bar.

6 Q Inside, adjacent to the front door?

7 A Yes.

8 Q And I will ask you next to look at some photographs I  
9 put in front of you. They are labeled as  
10 Government's Exhibit 306, 314, 316, and 318.

11 Do you recognize those photos?

12 A Yes.

13 Q What are they photos of?

14 A From the day he got shot.

15 Q They are photographs of the El Rancho Bar?

16 A Yes.

17 Q And are they fair and accurate depictions of the way  
18 the bar looked like that night?

19 A Yes.

20 MR. DURHAM: Your Honor, the government offers  
21 306, 314, 316 and 318.

22 MS. MACEDONIO: No objection, Judge.

23 MS. RANTALA: No objection, your Honor.

24 THE COURT: They are admitted.

25 (Whereupon, Government's Exhibits 306, 314, 316

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1 and 318 were received in evidence.)

2 MR. DURHAM: May I publish, your Honor?

3 THE COURT: Yes.

4 (At this time a document was exhibited on  
5 courtroom screen.)

6 Q Ms. Herrera, looking at the screen in front of you,  
7 showing you what is marked as Government's Exhibit 306,  
8 would you describe to the jury what is shown there?

9 A That is the bar.

10 Q Is that the front, outside of the bar?

11 A Yes.

12 Q And is that a view of, I believe, Fulton Avenue, and  
13 you are standing at Fulton Avenue looking at the bar?

14 A Yes.

15 Q And are you able to see the front door?

16 A Yes.

17 Q And where is that?

18 A By where the AC.

19 Q On the right side of the photograph there is an air  
20 conditioning unit at the front door there; is that  
21 accurate?

22 A Yes.

23 Q I will show you now Government's Exhibit 314.

24 Would you just explain to the jury what is shown  
25 there.

Herrera-Direct/Durham

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1 A That is the entrance to the bar.

2 Q Is that a close-up of the front door?

3 A Yes.

4 Q And the front door is open in that photograph?

5 A Yes.

6 Q And looking in, there is an object there, a red item  
7 there. Is that a chair?

8 A Yes.

9 Q What chair is that?

10 A That is the chair when David would sit down.

11 Q When he was working the door, that is where he would  
12 sit?

13 A Yes.

14 Q And I'm showing you now Government's Exhibit 316.

15 Again, would you explain what is shown there.

16 A That is the entrance of the bar when he got shot.

17 Q Is that when you are standing inside the bar, you are  
18 looking towards the front door?

19 A Yes.

20 Q And on the floor on the right side of that photograph  
21 there is some blood. Is that David's blood?

22 A Yes.

23 Q Showing you Government's Exhibit 318, on the left  
24 side there is a sweatshirt.

25 Whose sweatshirt is that?

Herrera-Direct/Durham

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1 A To clean the blood and to try to hold the blood.

2 Q That is something you and the other employees used to  
3 try to help him?

4 A Yeah.

5 Q Now, you said you stopped working at El Rancho  
6 shortly after David's murder?

7 A Yes.

8 Q Did you stop right away or after a little while?

9 A Like after a little while.

10 Q Why did you keep working there?

11 MS. MACEDONIO: Objection.

12 THE COURT: Sustained.

13 Q Why did you stop working there?

14 MS. MACEDONIO: Objection.

15 THE COURT: Sustained.

16 MR. DURHAM: Your Honor, may I approach?

17 THE COURT: Yes.

18 (Continued on next page.)

19

20

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**Herrera-Direct/Durham**

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1 (Whereupon, at this time the following took  
2 place at the sidebar.)

3 MR. DURHAM: I want to -- the bar went out of  
4 business shortly after the murder.

5 THE COURT: That is okay.

6 MS. MACEDONIO: Okay.

7 (Continued on next page.)

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1 (Whereupon, at this time the following takes  
2 place in open court.)

3 Q Shortly after David's murder, did the bar go out of  
4 business?

5 A Yes.

6 Q Why was that?

7 A After --

8 MS. MACEDONIO: Objection.

9 THE COURT: Sustained.

10 MR. DURHAM: No further questions.

11 THE COURT: Okay.

12 Cross-examination.

13 MS. MACEDONIO: I have no questions.

14 MS. RANTALA: No questions, your Honor.

15 THE COURT: You may step down, ma'am. Thank  
16 you.

17 (Whereupon, the witness at this time steps down  
18 from the witness stand.)

19 THE COURT: Next witness.

20 MS. CAPWELL: Your Honor, the government calls  
21 Joseph Marino.

22 (Whereupon, at this time there was a pause in  
23 the proceedings.)

24 THE COURT: Sir, take the witness stand, please.  
25 Remain standing while the oath is administered once you

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1 get there.

2 THE CLERK: Please raise your right hand.

3

4 J O S E P H M A R I N O,

5 called as a witness, having been first

6 duly sworn, was examined and testified

7 as follows:

8 THE CLERK: Please state and spell name for the  
9 record.

10 THE WITNESS: Detective Joseph Marino,  
11 M-A-R-I-N-O, shield 702.

12 THE COURT: Sir, please keep your chair close to  
13 the microphone and keep your voice up.

14

15 DIRECT EXAMINATION

16 BY MS. CAPWELL:

17 Q Good afternoon, sir.

18 A Good afternoon.

19 Q What do you do for a living?

20 A I'm a crime scene investigator for the Nassau County  
21 Police Department.

22 Q And how long have you been doing that?

23 A 42 years.

24 Q Very well.

25 And do you have a job title?

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1 A Yes.

2 Q What is that?

3 A I'm a detective.

4 Q And how long have you been a detective?

5 A I have been a detective for 22 years.

6 Q Generally speaking, what are your duties and  
7 responsibilities as a detective within the crime scene  
8 unit?

9 A Well, generally called out by the detective division.  
10 We respond to crime scenes. We collect, photograph and  
11 transport physical evidence.

12 Q Are you typically the first law enforcement officer  
13 on the scene?

14 A No.

15 Q How is the crime scene secured?

16 A The first responders will usually secure the crime  
17 scene.

18 Q The first responders, who are you referring to  
19 specifically?

20 A In this instance it was the Hempstead Police  
21 Department.

22 Q And approximately how many cases do you work on each  
23 year?

24 A 150, 200 cases.

25 Q And of those, approximately how many involve

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1 homicides?

2 A Maybe 30, 40 percent.

3 Q And I want to turn your attention now to the night of  
4 March 6th, 2010, into the early morning hours of  
5 March 7th, 2010.

6 Were you working on March 6th into March 7th,  
7 2010?

8 A Yes, I was. I was working a 7:00 p.m. to 7:00 a.m.  
9 tour of duty.

10 Q And did you respond to a crime scene at a bar named  
11 El Rancho in Hempstead?

12 A Yes, I did.

13 Q And at approximately what time did you arrive there?

14 A I arrived at the scene at approximately 2:00 a.m.

15 Q All right.

16 So that is March 7th?

17 A Yes.

18 Q And were you with anybody else?

19 A Excuse me?

20 Q Were you with anybody else, any other officers?

21 A Yes. I was with Detective O'Hara from the crime  
22 scene unit, and Detective Sergeant Armstrong from the  
23 crime scene unit.

24 Q And what was your assignment that night?

25 A To cover the scene.

Marino-Direct/Capwell

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1 Q Were you the primary or were you assisting one of the  
2 colleagues?

3 A I was the primary.

4 Q When you arrived at the scene, was the victim still  
5 present?

6 A No, he wasn't.

7 Q What did you do when you arrived there?

8 A When we first arrived at the scene, we spoke to the  
9 detectives at the scene. There were homicide detectives  
10 there.

11 Q What was the purpose in doing that?

12 A They just give us generally what happened basically.  
13 We do a walk-through of the scene with them, and they show  
14 us what they found so far.

15 Q Okay.

16 And speaking with respect to the crime scene at  
17 the El Rancho Bar on March 6th into March 7th, when you  
18 arrived, can you describe the walk-through that you did?

19 A Yes.

20 We went in. Basically it was a small scene. It  
21 was the vestibule area of the El Rancho Bar and Grill. We  
22 did the walk-through. We saw the casing on the floor.  
23 There was blood on the floor. We walked outside and we  
24 walked up and down the sidewalk.

25 Q And, sir, when you walked up and down the sidewalk,

Marino-Direct/Capwell

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1 was it around Fulton Avenue?

2 A Around Fulton Avenue, correct.

3 Q And did you find anything of significance at that  
4 point?

5 A Yes.

6 As we were walking westbound on Fulton Avenue,  
7 we saw a cell phone battery cover and a battery from a  
8 cell phone.

9 Q All right.

10 After you completed the walk-through of the  
11 scene, both inside and outside the bar, what did you do  
12 next that night?

13 A We videotaped the scene.

14 Q All right.

15 Did you take the video yourself?

16 A Yes.

17 Q And after you took the video of the scene, what did  
18 you do?

19 A I put out markers, and I used the yellow markers,  
20 three markers.

21 Marking number one was the marking of the casing  
22 in the vestibule. Marker number two was the battery  
23 cover, and marker number three was the cell phone battery.

24 Q Okay.

25 Both of those, cell phone battery and cover,

Marino-Direct/Capwell

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1 were outside on the sidewalk?

2 A Yes, on Fulton Avenue.

3 Q After placing the three markers, what did you do  
4 next?

5 A Photographed the scene.

6 Q Okay.

7 Did you take the photographs?

8 A Yes, I did.

9 Q After you took the photographs, what, if anything,  
10 else did you do?

11 A After I took the photographs we collected the  
12 evidence.

13 Q Prior to collecting the evidence, did you do any  
14 dusting for fingerprints or swabbing for any other type of  
15 material?

16 A Yes. I dusted the door, the interior and exterior of  
17 the metal doors of the bar. And I took a swab from the  
18 vicinity of my marker number one.

19 Q Marker one was a swab of what?

20 A The bullet.

21 Q After you collected all the evidence at the scene,  
22 what did you do that night, or that morning, of March 7th?

23 A After we collected it, we put it in an evidence bin  
24 and it was transported back to the office, the crime scene  
25 office where I typed up the paperwork.

Marino-Direct/Capwell

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1 I placed the bar codes on the evidence. I put  
2 my stickers on the evidence, evidence tape, and initialed  
3 it. And I put it in the locker.

4 Q All right.

5 And after you had processed the evidence back at  
6 the precinct, did you have any further involvement with  
7 this investigation?

8 A No.

9 Q I would like to show you now what is marked as  
10 Exhibit 330.

11 (Handed to the witness.)

12 Do you recognize Government's Exhibit 330?

13 A Yes, I do.

14 Q And what is that?

15 A This is the DVD of the crime scene.

16 Q And how do you recognize that?

17 A We looked at it yesterday as my -- it has my initials  
18 and the date.

19 Q Okay.

20 Does that video fairly and accurately depict the  
21 crime scene as you saw it on March 7th, 2010?

22 A Yes, it does.

23 Q And approximately how long does that crime scene  
24 video run?

25 A It is short. It is eight minutes.



Marino-Direct/Capwell

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1 MR. DURHAM: Your Honor, the government will  
2 move to admit Government's Exhibit 330 and to publish it  
3 to the jury.

4 MR. LEVINE: No objection.

5 MS. RANTALA: No objection, your Honor.

6 THE COURT: Government's Exhibit 330 is  
7 admitted, and it can be played to the jury.

8 (Whereupon, Government's Exhibit 330 was  
9 received in evidence.)

10 Q As it plays, Detective Marino, if you describe what  
11 is happening to the jury.

12 A Yes.

13 Q You have a laser button in front of you, it has a  
14 button, the pointer, and if at any point you want to flash  
15 the pointer at the laser screen, you can do that.

16 (Video is played.)

17 A This is my title sheet, the date, myself and  
18 Detective O'Hara, and the homicide number.

19 This is the exterior front of the El Rancho Bar  
20 and Grill.

21 Q Which way are we looking now?

22 A I'm now panning west. Now we are panning east.

23 Q At 37.

24 A Now I'm walking toward the front entrance.

25 Q That's at 52.

Marino-Direct/Capwell

1106

1 A That is the front door, the metal door.

2 Looking inside the vestibule, now panning west  
3 again.

4 Q Minute 109.

5 A Now, that is east down Fulton Avenue.

6 Q That is at 124.

7 A What you see on the ground is marker three, some  
8 gloves and sheets.

9 This is looking inside the vestibule area. It  
10 is a four and a half foot -- three and a half foot by  
11 three and a half foot vestibule. And there is the bar  
12 stool.

13 That is looking down at the floor.

14 Q Minute 155.

15 What are we looking at now?

16 A Now looking at the blood. This is where the victim  
17 was laying. There was also clothing and medical debris.

18 Q And looking now at 222.

19 A Yes.

20 Q Go ahead.

21 A Again, the vestibule area, the bar stool. Now I'm  
22 panning down to the casing.

23 Q 247.

24 A That is the casing on the rug.

25 Q Can you tell the jury briefly, what is a casing?

**Marino-Direct/Capwell**

1107

1 A A casing is part of the bullet. This is the -- this  
2 is what holds the powder in the cartridge.

3 Q And what type of casing was that?

4 A It was a Remington .22 casing.

5 Q And at 321, you are heading back outside?

6 A Now heading back outside, and panning west.

7 There is the cell phone battery cover.

8 Q At 337.

9 A It is on Fulton Avenue.

10 Here is the cell phone battery.

11 Q 353.

12 A On the sidewalk.

13 Q You collected both those items, at the end of the  
14 review of the crime scene you collected both of those  
15 items?

16 A Yes, I did.

17 Panning again south, and now we are looking  
18 east.

19 Again in front of the car.

20 Now, that is the end.

21 Q Thank you.

22 I have put a stack of photographs on the front  
23 of the desk in front of you, behind the monitor. They are  
24 Government's 306 through 321, and I will ask you to look  
25 through them. When you are done, let me know if you

Marino-Direct/Capwell

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1 recognize those exhibits.

2 A Yes, these are the photographs that I took.

3 Q And those are from the crime scene at the El Rancho  
4 Bar and Grill, March 6th to March --

5 A Yes.

6 Q And --

7 A March 7th, 2010. Yes.

8 Q And they fairly and accurately depict the crime scene  
9 that night?

10 A Yes.

11 MS. CAPWELL: The government moves 306 through  
12 321, although I realize some of them are already in  
13 evidence.

14 MS. MACEDONIO: No objection.

15 MS. RANTALA: No objection.

16 THE COURT: 306 through 321 are admitted.

17 (Whereupon, Government's Exhibit 306 through 321  
18 was received in evidence.)

19 MS. CAPWELL: I would like to publish a few of  
20 those photographs?

21 THE COURT: Yes.

22 (At this time a document was exhibited on the  
23 courtroom screen.)

24 Q 306, what is that there?

25 A The exterior front of the El Rancho Bar and Grill

Marino-Direct/Capwell

1109

1 looking northbound.

2 Q And 308 is now on the overhead, what view do we have  
3 here?

4 A A view of the sidewalk looking westbound on Fulton  
5 Avenue.

6 You can see my markers, my yellow marks, number  
7 two and three.

8 Q Could you use the pointer and point it out on the  
9 large screen behind you?

10 A Here.

11 Q What number is that?

12 A That is two, and there is three.

13 Q For the record, number two is toward the middle  
14 bottom, center, a little bottom of the photograph, and  
15 number three is center and about two or three inches on  
16 top of where you pointed as marker number two?

17 A Correct.

18 Q I will now place Exhibit 312 on the overhead.

19 What does that photograph show?

20 A This is my marker number two. It shows the battery  
21 cover, the cell phone battery cover.

22 Q And this is Government's Exhibit 309 now.

23 What is that showing?

24 A This is, again, looking westbound. And it shows my  
25 marker number three.

Marino-Direct/Capwell

1110

1 Q On the left corner of the photograph?

2 A Correct.

3 Q I will now show you Government's Exhibit 313.

4 What does this photograph show?

5 A That is the cell phone battery on the floor by my  
6 marker number three.

7 Q Okay.

8 Can you just point out another piece of debris  
9 on the photograph, so please point out where the battery  
10 is?

11 A Right here.

12 Q The black and white object to the left of marker  
13 number three?

14 A That's correct.

15 Q And Government Exhibit 314, what is that?

16 A Looking northbound, looking into the entrance, into  
17 the vestibule area.

18 Q And I think you mentioned in the video there was some  
19 medical debris, does this photograph capture that as well?

20 A Yes. Gloves, sheet.

21 Q I will now place Government's Exhibit 317 on the  
22 screen.

23 (At this time a document was exhibited on  
24 courtroom screen.)

25 What does this photograph depict?

Marino-Direct/Capwell

1111

1 A Here we are inside the bar looking towards the  
2 vestibule. You can see my marker number one here.

3 Q And by vestibule, you are referring to the entryway  
4 of the bar?

5 A Yes, that's correct. That is this area right here,  
6 the vestibule.

7 Q All right.

8 And marker number one would be almost in the  
9 center of the photograph?

10 A Correct.

11 Q And what were you marking with that cone?

12 A That was the casing.

13 Q And on the left side of the picture there appears to  
14 be a pool table?

15 A Yes.

16 Q And in the back of the picture, top back of the  
17 picture, some windows and mirrors?

18 A Yes, correct.

19 Q All right.

20 A This is the dance area here.

21 Q And that is the bottom side of the photograph?

22 A Correct.

23 Q And showing you now 316. What does this photograph  
24 show?

25 A Here we are looking eastbound into the vestibule. It

Marino-Direct/Capwell

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1 shows my marker number one, clothing, medical debris on  
2 the floor here.

3 Q And where did you take the blood sample from that you  
4 mentioned earlier?

5 A It was in front of the window in this area here.

6 Q Pointing to the bloody area on the floor under the  
7 window?

8 A Correct.

9 Q All right.

10 320, what does that show?

11 A My marker number one, with the casing on the floor.

12 Q All right.

13 And here is a closer shot of that, 321, what do  
14 we see here?

15 A Again, the marker number one, with the casing on the  
16 floor.

17 Q And I believe you said it was a .22 Remington?

18 A .22 Remington casing, yes.

19 Q And, sir, I will ask you now to look at the couple of  
20 plastic sleeves with items in front of you, and I will ask  
21 you to take a look at them. Specifically, we will start  
22 with the plastic pouch that I have labeled 328-A, for  
23 alpha.

24 A Yes.

25 Q And do you recognize the items contained within



Marino-Direct/Capwell

1113

1 328-A?

2 A Yes, I do.

3 Q What are they?

4 A The plastic container that I put the casing in. It  
5 has the bar code on it with item number one.

6 It has my initials here and my shield number.

7 Q Okay.

8 Within the plastic container, is there anything  
9 inside it?

10 A Yes. There is the casing.

11 Q Okay.

12 And that is the casing in the photograph behind  
13 you marked by cone number one?

14 A Correct.

15 Q And are your initials on there?

16 A Yes. My initials and my shield number, yes, are on  
17 there, yes.

18 MS. CAPWELL: At this time the government moves  
19 to admit Government's Exhibit 328-A.

20 MR. LEVINE: Can I see it?

21 (Whereupon, at this time there was a pause in  
22 the proceedings.)

23 THE COURT: Any objection?

24 MR. LEVINE: No.

25 MS. RANTALA: No objection, your Honor.

Marino-Direct/Capwell

1114

1 THE COURT: 328-A is admitted.

2 (Whereupon, Government's Exhibit 328-A was  
3 received in evidence.)

4 MS. CAPWELL: Your Honor, may I place it on the  
5 overhead?

6 THE COURT: Yes.

7 (At this time a document was exhibited on  
8 courtroom screen.)

9 Q It may be a little hard to see because of the glare,  
10 but I put 328-A on the overhead.

11 Can you see the small plastic box that you  
12 described?

13 A Yes, I can.

14 Q And do you see that there appears to be some red tape  
15 on it?

16 A Yes.

17 Q What is that red tape?

18 A That is the evidence tape that we put on there to  
19 seal it.

20 Q And did you place the red tape on there?

21 A Yes, I did.

22 Q And at what point did you do that?

23 A After I put it in the box, in the plastic box, I put  
24 the red tape on to seal it. And then I initialed it and  
25 put my shield number.

Marino-Direct/Capwell

1115

1 Q I will try to -- am I pointing to your initials right  
2 there?

3 A Yes, JM, yes, that's correct, and 702.

4 Q That is your shield number?

5 A Yes.

6 Q And you had mentioned also, I believe, that you had  
7 bar coded it once you got back to the precinct?

8 A Yes.

9 Q And is that the yellow sticker that is on there?

10 A That's correct.

11 Q And this was item number one?

12 A Item number one, yes.

13 Q And then inside the container is the casing; is that  
14 correct?

15 A Yes.

16 Q I will try to zoom in on that.

17 The item I was moving in that box, is that the  
18 casing?

19 A Yes, it is.

20 Q Okay.

21 Were you -- I believe I placed two other items  
22 on the desk there in front of you. Would you look at what  
23 is marked as 331-A and 331-B.

24 A Yes.

25 Q Do you recognize the items marked 331-A and 331-B?

Marino-Direct/Capwell

1116

1 A Yes.

2 Q And can you tell us what 331-A is?

3 A 331-A is the cell phone cover that I recovered. I  
4 placed it in the paper bag, in this paper bag.

5 Q And just for the record, the sticker Exhibit 331-A,  
6 is it on the double cover itself or is it on the brown  
7 evidence bag?

8 A The sticker is on the brown evidence bag.

9 Q And how do you recognize the brown evidence bag?

10 A It has the evidence tape on it. And it has my shield  
11 number and my initials.

12 Q And then turning to item 331-B, it should be within  
13 the same plastic bag you are holding, the same one as  
14 331-A.

15 A This is 332-A .

16 Q Okay, just looking at 331-B, what is that?

17 A That is the cell phone battery cover.

18 Q And there is a 331-A, and B, they are both inside  
19 clear zip-lock bags?

20 A Yes.

21 Q And did you just recently open the brown evidence  
22 bag, which is 331-A, and remove 331-B, which is the cell  
23 phone cover?

24 A Yes.

25 Q Did you do it yesterday in the U.S. Attorney's

Marino-Direct/Capwell

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1 Office?

2 A Yes.

3 Q And then placed the -- them both in the zip-lock bag?

4 A Yes.

5 MR. DURHAM: The government moves to admit 331-A  
6 and B.

7 MR. LEVINE: I have no objection.

8 MS. RANTALA: No objection, your Honor.

9 THE COURT: They are both admitted.

10 (Whereupon, Government's Exhibits 331-A and  
11 331-B were received in evidence.)

12 Q Sir, I will now ask you to turn to the exhibit marked  
13 332-A and B.

14 Do you recognize those exhibits?

15 A Yes, I do.

16 Q And what is 332-A.

17 A This is the cell phone battery that I picked up.

18 Q Does 332-A refer to the brown evidence bag you used  
19 to place the battery into?

20 A Yes, it does.

21 Q And the actual cell phone battery is marked as 332-B?

22 A Yes.

23 Q How do you recognize those items?

24 A I placed it in this particular paper bag. It has my  
25 evidence tape on it, the red evidence tape. It has my

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1 initials and my shield number.

2 Q And to be clear, this is the cell phone battery you  
3 recovered on the sidewalk outside the bar?

4 A Yes.

5 Q And you placed it in the brown evidence bag and  
6 sealed it?

7 A Yes.

8 Q And now those items are both contained within a clear  
9 zip-lock bag; is that correct?

10 A Yes.

11 Q And did you do that yesterday also at the U.S.  
12 Attorney's Office?

13 A Yes.

14 Q And you removed the battery from the brown evidence  
15 bag?

16 A Yes.

17 MS. CAPWELL: Your Honor, the government moves  
18 to admit Exhibits 332-A and B.

19 MR. LEVINE: No objection.

20 MS. RANTALA: No objection, your Honor.

21 THE COURT: 332-A and B are admitted.

22 (Whereupon, Government's Exhibits 332-A and  
23 332-B were received in evidence.)

24 MS. CAPWELL: Thank you, your Honor. May I  
25 publish them to the jury?

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1 THE COURT: Yes.

2 (At this time a document was exhibited on the  
3 courtroom screen.)

4 Q I have 331-B on the overhead projector.

5 What is that?

6 A The cell phone cover.

7 Q All right.

8 And within the same plastic bag marked as 331-A  
9 is the brown evidence bag?

10 A Yes, it is.

11 Q Showing you the other side of this exhibit, do you  
12 see your initials -- are you able to see your initials  
13 despite the glare?

14 A Yes.

15 It has my initials and my shield with the red  
16 tape that I put on there, the evidence tape, the red tape,  
17 shield 702.

18 Q Thank you.

19 I will now place what is marked as  
20 Government's Exhibit 332-B on the overhead, as well as  
21 332-A. And 332-B, what is that?

22 A The cell phone battery.

23 Q And 332-A is in the same zip-lock bag as the evidence  
24 bag that you used to collect it in?

25 A Correct.

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1 Q I will show you Government's Exhibit 325, which is  
2 already in evidence.

3 Is that coming up on your screen?

4 A No.

5 (At this time a document was exhibited on  
6 courtroom screen.)

7 Q Do you recognize this diagram?

8 A Yes. The sketch of the barmaid by Detective Rinaldi  
9 from our crime scene.

10 Q Was he there with you that night at the crime scene?

11 A Yes.

12 Q All right.

13 And can you, just using the laser pointer, does  
14 the sketch show where you found the various pieces of  
15 evidence?

16 A Yes, it does.

17 Q And if you can show us number one where the casing  
18 was found.

19 A This is number one.

20 Q And that is in the vestibule area?

21 A That's correct.

22 Q And number two, the cell phone cover on the diagram?

23 A Number two is here.

24 Q And that is depicted on the diagram as number two?

25 A Yes. On Fulton Avenue, right.



**Marino-Cross/Levine**

1121

1 Q And then the cell battery location?

2 A Number three.

3 Q And then you say there was a blood sample as well, is  
4 that shown on the diagram?

5 A Yes. Blood sample was number four in front of the  
6 window.

7 Q Okay.

8 And what do five and six refer to?

9 A Five and six are the latent fingerprints that I  
10 recovered from the interior of the door.

11 MS. CAPWELL: Thank you very much. No further  
12 questions.

13 THE COURT: Okay.

14 Cross-examination.

15

16 CROSS-EXAMINATION

17 BY MR. LEVINE:

18 Q Good afternoon, detective.

19 A Good afternoon.

20 Q When you arrived at the scene the early morning of  
21 March 7th, 2010, how many law enforcement people would you  
22 say were there?

23 A There were homicide detectives there. There were  
24 Third Squad detectives there. There was Hempstead  
25 officers there.

**Marino-Cross/Levine**

1122

1 Q Can you give us an estimate of how many people you  
2 saw there?

3 A Estimate of ten to fifteen.

4 Q And you obviously went into the bar; is that correct?

5 A Yes.

6 Q When you went into the bar were there any patrons  
7 there?

8 A Yes. I think there were some patrons in the bar.

9 Q Were there any employees in the bar?

10 A Yes. I think there were employees, yes.

11 Q To your knowledge had any patrons or employees left  
12 the bar from the time of the shooting until the time you  
13 got there?

14 A I don't know. I'm sure they did. But I'm not aware  
15 of that.

16 Q You said you found a casing; is that correct?

17 A Yes.

18 Q And that would indicate to you that there was likely  
19 a semi-automatic pistol; is that correct?

20 A Yes.

21 Q And the semi-automatic pistol ejects the casing from  
22 the gun?

23 A Correct.

24 Q And there is no real way to predict where that casing  
25 is going to end up when that casing is ejected from the

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1 gun, right?

2 A That's right.

3 Q In some guns it ejects from the right side of the gun  
4 and others it ejects to the left side of the gun?

5 A Yes.

6 Q It also depends how the person is holding the gun?

7 A Yes.

8 Q And depends if they are holding it straight up or  
9 sideways or some other way; is that correct?

10 A Yes.

11 Q And that casing when it comes out -- withdrawn.

12 You said the vestibule was three and a half feet  
13 by three and a half feet?

14 A Yes.

15 Q A very small space?

16 A Yes.

17 Q And there was a stool in there, right?

18 A Yes.

19 Q Plus there was the outside door that was open, right?

20 A Yes.

21 Q And would you agree that if a gun was shot, a  
22 semi-automatic pistol was shot in that area, there is a  
23 good chance that that shell casing was going to strike  
24 something in that vestibule area?

25 A Possible, yes.

**Marino-Cross/Levine**

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1 Q And in fact, in the 321, does that look like it might  
2 be a bloody footprint?

3 A Yes.

4 Q And the shell casing is within the footprint?

5 A Yes.

6 Q And in fact there is some blood on the casing itself?

7 A Yes.

8 Q Indicating someone may have stepped on that casing;  
9 is that correct?

10 A Yes.

11 Q All right.

12 You dusted the door for prints; is that right?

13 A Yes.

14 Q You got some latent prints off the door?

15 A Yes, I got two.

16 Q And those were from the interior of the door?

17 A Yes.

18 Q And did you get any from the exterior of the door?

19 A No.

20 Q Did you send those latents?

21 A Yes, I did.

22 Q You didn't do any comparison of them yourself?

23 A No, I did not.

24 Q The windows to the bar were blackened, right? They  
25 were dark?

Marino-Cross/Levine

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1 A Dark, yes, you can see outside.

2 Q You couldn't see outside?

3 A You can see outside.

4 Q From the outside of the bar, could you see inside?

5 A I don't recall. I know from the inside you could see  
6 outside.

7 Q Let me show you 317 in evidence.

8 The windows are the immediate right from the  
9 door to -- in 317; is that correct?

10 A Yes.

11 Q There is something to the right of the window, there  
12 appears to be a mirror there; is that right?

13 A Yes.

14 Q And with this photograph, could you see what is  
15 outside the window?

16 A I can see some lights on the outside.

17 Q You can see some lights?

18 A Yes.

19 Q And you can't see details?

20 A No, not from this picture, no.

21 MR. LEVINE: Nothing further, thank you.

22 MS. RANTALA: No questions, your Honor.

23 THE COURT: Redirect?

24 MS. CAPWELL: No, your Honor. Thank you.

25 THE COURT: You can step down.

1126

1 (Whereupon, the witness at this time steps down  
2 from the witness stand.)

3 THE COURT: Next witness.

4 MS. CAPWELL: The next witness is Sonia Ventura.  
5 She will require the Spanish interpreter. May we use our  
6 interpreter?

7 THE COURT: Sure.

8 Will the interpreter go over.

9 Please remain standing, ma'am, while I  
10 administer the oath.

11 Please raise your right hand.

12

13 S O N I A V E N T U R A ,

14 called as a witness, having been first  
15 duly sworn through the interpreter, was.  
16 examined and testified as follows:

17 MS. RANTALA: Your Honor, my client can't hear,  
18 nor Mr. Martinez.

19 (Pause.)

20 THE COURT: Okay now?

21 MS. RANTALA: Yes.

22 THE COURT: Let me do it again.

23

24

25

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1 S O N I A V E N T U R A,

2 called as a witness, having been first  
3 duly sworn through the interpreter, was.  
4 examined and testified as follows:

5 THE COURT: You can be seated.

6 Please state and spell your name for the record.

7 THE WITNESS: Sonia.

8 THE COURT: Last name.

9 THE WITNESS: Ventura.

10 THE COURT: Please spell it.

11 THE WITNESS: S-O-N-I-A V-E-N-T-A.

12 MS. CAPWELL: Your Honor, it is V-E-N-T-U-R-A.

13 THE COURT: Clear that up.

14 Spell it again, ma'am.

15 THE WITNESS: V-E-N-T-U-R-A.

16 THE COURT: All right. Go ahead.

17 MS. CAPWELL: Thank you, your Honor.

18

19 DIRECT EXAMINATION

20 BY MS. CAPWELL:

21 Q Good afternoon, Ms. Ventura.

22 A Good afternoon.

23 Q How old are you?

24 A 27 years.

25 Q And I'm going to take you back now to about three

Ventura-Direct/Capwell

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1 years ago to March 6th, 2010, okay?

2 A Yes.

3 Q Were you working that night?

4 A Yes.

5 Q Where were you working?

6 A At the El Rancho Bar in Hempstead.

7 Q And can you describe what kind of bar or business  
8 that was?

9 A Where alcoholic beverages are sold.

10 Q And is there a dance floor?

11 A Yes.

12 Q And a pool table?

13 A Yes.

14 Q What did you do there?

15 A I was a waitress.

16 Q About how long were you a waitress prior to  
17 March 6th, 2010?

18 A Two months.

19 Q What shift or hours were you working on that night in  
20 2010?

21 A From 9:00 to 4:00 in the morning.

22 Q So from 9:00 p.m. on March 6th to 4:00 a.m. on  
23 March 7th?

24 A Yes.

25 Q And what happened that night at the El Rancho Bar?



Ventura-Direct/Capwell

1129

1 A David was killed.

2 Q All right.

3 When you say David, who was David?

4 A The security from the bar.

5 Q Did you know David's full name?

6 A No, I never learned it.

7 Q I will place Exhibit 337 on the monitor in front of  
8 you.

9 Do you recognize the person in that photo?

10 (At this time a document was exhibited on  
11 courtroom screen.)

12 A Yes.

13 Q Who is that?

14 A David.

15 Q Now, tell us what happened on the night that David  
16 was killed.

17 A He was shot and killed.

18 Q All right.

19 Where were you when he was shot?

20 A At the corner of the bar.

21 Q Were you in the front corner of the bar or toward the  
22 back of the bar?

23 A To the rear of the bar.

24 Q What were you doing?

25 A I was sitting.

Ventura-Direct/Capwell

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1 Q Okay.

2 And how did you become aware that David had been  
3 shot?

4 A Because one of the girls that worked there said that  
5 he had been shot, he had been killed.

6 Q Do you recall who it was that said that?

7 A Yes.

8 Q And what is her name?

9 A Jessica.

10 Q Now, in addition to Jessica saying David had been  
11 shot, did you hear or see anything?

12 A I only heard a shot.

13 Q Okay.

14 You heard a shot?

15 A Yes.

16 Q And describe how loud was it?

17 A It was a shot. It was a loud sound. I didn't think  
18 that he had been shot or anybody had been shot.

19 Q Now, after you heard that sound, the shot, what did  
20 you do?

21 A Nothing. I remained seated. I didn't imagine  
22 someone had been shot.

23 Q Now, what, if anything, did you see soon after you  
24 heard the shot?

25 A Two men left running immediately after the shot.

Ventura-Direct/Capwell

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1 Q And did you see them?

2 A I only saw them from the back. I didn't see their  
3 faces.

4 Q When you saw them, were they inside the bar or  
5 outside the bar?

6 A They were outside of the bar. They were running.

7 Q And how did you see them?

8 A Umm, two men, not too big, kind of small.

9 Q Okay.

10 You mentioned you did not see their faces; is  
11 that correct?

12 A No. I didn't see the faces.

13 Q What were they wearing?

14 A They were wearing sweatshirts with a zipper and hat.

15 Q Did you see them through the window in the front of  
16 the bar?

17 THE COURT: Sustained. Rephrase the question.

18 Q You testified you were inside the bar, toward the  
19 rear of the bar. How did you see these two men who were  
20 running outside the bar?

21 A Well, there was not that many people. And when there  
22 are a few persons, you can see easily on the outside.

23 Q This might be obvious, but how from the inside of the  
24 bar, how did you see toward the outside of the bar?

25 A Because the glass that is toward the front of the

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1 street, it is clear. You can see easily through it.

2 Q All right.

3 When you saw the two individuals running as you  
4 were looking out the window, which way were they running,  
5 to the left or to the right?

6 A Towards the right.

7 Q And could you tell, were they men or women?

8 A Yes.

9 Q And how did you know that?

10 A Because of the clothing they were wearing, they  
11 looked like men.

12 Q You saw the two men running outside. Did you see the  
13 person who shot David inside the bar?

14 THE INTERPRETER: Again, please?

15 MS. CAPWELL: Sure.

16 Q You saw the two men running outside the bar, at any  
17 point did you see the person who shot David inside the  
18 bar?

19 A No.

20 Q And I believe you earlier described --

21 A Not at that moment.

22 Q I believe you earlier stated what the two individuals  
23 were wearing. I ask you to repeat that, please.

24 A They were wearing a sweatshirt with zipper and a hat.

25 Q Okay.

Ventura-Direct/Capwell

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1 What do you mean by a hat?

2 A Something that you wear like this (indicating).

3 MS. CAPWELL: Let the record reflect the witness  
4 indicated from her shoulders to the top of her head?

5 THE COURT: Yes, indicating throwing something  
6 over the top of her head.

7 THE WITNESS: Yes.

8 Q And the thing that the two individuals were wearing  
9 over the top of their head, was it attached to their  
10 sweater or sweatshirt?

11 A It is part of the sweater that they wear.

12 Q It was part of the same clothing?

13 A Yes.

14 Q And what color were these two men wearing?

15 A One in black, and the other one in a gray color.

16 Q Now, after David was shot, did you stay at El Rancho  
17 until police arrived?

18 A Yes.

19 Q And did you stay -- after the police arrived, did you  
20 continue to stay at the El Rancho Bar?

21 A Yes.

22 Q Let me ask you briefly about David.

23 What were his responsibilities at the bar with  
24 respect to security?

25 A He would check the people as they are getting into

Ventura-Direct/Capwell

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1 the bar. Sometimes they carry weapons, or something like  
2 weapons?

3 Q And did he have any other responsibilities?

4 A When someone wouldn't pay, he had the responsibility  
5 to make them pay.

6 THE INTERPRETER: The interpreter would like to  
7 correct that.

8 Not to make them pay. To collect.

9 Q To collect?

10 A Yes.

11 Q And did you witness any problem that David had at the  
12 bar in the days prior to the shooting?

13 A Yes.

14 Q Tell us what happened.

15 A There were four men. They ordered four beers. They  
16 didn't pay. And then --

17 Q And then what happened?

18 A He collected from them, and they started fighting .

19 Q Okay.

20 Let me just take you back a couple of steps.

21 Were you waiting on these four men as their  
22 waitress?

23 A Yes.

24 Q Did you know them?

25 A No.

Ventura-Direct/Capwell

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1 Q As best you can, can you describe them, their age,  
2 their appearance.

3 A They were men, younger than 30. They were not tall.  
4 They were more on the short size.

5 Q Did they speak Spanish?

6 A Yes.

7 Q Okay.

8 Did you try to collect money from them for the  
9 beer?

10 A I got the money once only.

11 Q And let's be clear. Did they pay you the one time?

12 A No. They didn't pay.

13 Q Okay.

14 Did you attempt to get money from them, to get  
15 payment from them?

16 A Okay.

17 Yes, I tried to collect, and they didn't pay.

18 Q All right.

19 After they would not pay their bill, what, if  
20 anything, did you do?

21 A I told the security.

22 Q And by security, who specifically did you go to?

23 A David.

24 Q After you went to David, what did you tell David?

25 A That these men didn't want to pay.

Ventura-Direct/Capwell

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1 Q After that, what if anything did David do?

2 A He attempted to collect. And they said they wasn't  
3 going to pay, and started fighting.

4 Q Okay.

5 Did the fight start inside the bar?

6 A No, it was outside.

7 Q Who was outside fighting?

8 A They got out with David.

9 Q Let me just clarify.

10 The four guys were outside?

11 A Yes.

12 Q And was David outside also?

13 A He went out to attempt to collect when they were  
14 leaving .

15 Q Okay. Now, with the attempt to collect, was it the  
16 money that they owed?

17 A Yes.

18 Q And what happened when David went outside?

19 A He had -- they had started fighting.

20 Q I'm sorry?

21 A They had started fighting.

22 Q Was that with David that they started fighting?

23 A Yes.

24 Q And what happened?

25 A And they shouted they would come back later.



Ventura-Direct/Capwell

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1 Q And at some point did David come back inside?

2 A Yes.

3 He came in and shut the door.

4 Q And by shutting the door, did he lock the door?

5 A Yes.

6 Q And when he returned inside, did you notice anything  
7 in particular?

8 A There was a smell of pepper spray -- pepper gas.

9 Q Okay, and what was that from?

10 A From the outside.

11 Q Did David carry pepper spray as part of the job?

12 A Yes.

13 Q And do you know whether he sprayed it at the guys  
14 outside?

15 A Yes. He is the one who had sprayed them with pepper  
16 gas.

17 MS. CAPWELL: I think I have less than five  
18 minutes left, your Honor.

19 THE COURT: Can the jury stay a few minutes so  
20 we can get the jury -- the witness done?

21 (The jury indicates in the affirmative.)

22 Q Now, the men there, you said they -- you did not know  
23 them?

24 A No, I did not.

25 Q Were they with anybody or speaking with anybody that

Ventura-Direct/Capwell

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1 you did know?

2 A Yes.

3 Q Who was that that they were speaking to?

4 A Princessa.

5 Q Who is Princessa?

6 A He is a gay person.

7 Q And you said that that is a gay man?

8 A Yes.

9 Q And how did you know him?

10 A He would come to the bar to dance there.

11 Q You had seen him at El Rancho in the past?

12 A Yes.

13 Q And does he know the four gays that you described as  
14 later having the fight with David?

15 A Yes, because when they arrived he said hello to them  
16 and he was there chatting with them.

17 Q And what type of beer did El Rancho sell when you  
18 worked there?

19 A Corona, Heineken, Modelo Especial, and Coors Light.

20 MS. MACEDONIO: Objection, your Honor,  
21 relevance.

22 MS. CAPWELL: My next question will deal with  
23 and explain the relevance.

24 Q Where is Modelo Especial from?

25 A Mexico.

**Ventura-Direct/Capwell**

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1 THE COURT: It didn't clear up relevance, unless  
2 you want to approach?

3 MR. DURHAM: Yes, and briefly, your Honor.

4 (Continued on next page.)  
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1 (Whereupon, at this time the following took  
2 place at the sidebar.)

3 MS. CAPWELL: It goes to the interstate aspect  
4 that we have to establish. This bar is selling beers from  
5 outside the country. They went out of business, and that  
6 is it. I have two questions more to go.

7 (Continued on next page.)

Ventura-Direct/Capwell

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1 (Whereupon, at this time the following takes  
2 place in open court.)

3 THE COURT: Objection overruled.

4 Q You can answer. Where is the beer, Modelo Especial,  
5 from?

6 A Mexico.

7 Q And how about Corona?

8 A Mexico.

9 Q Let me just quickly show you a photograph which is in  
10 evidence as Government's Exhibit 317.

11 Ms. Ventura, is this the inside of the El Rancho  
12 Bar?

13 (At this time a document was exhibited on  
14 courtroom screen.)

15 A Yes.

16 Q And towards the rear of the photograph, near the  
17 front door, are those the windows that you were referring  
18 to earlier in your testimony?

19 A Yes.

20 Q And are those the windows from which you could see  
21 the two men running after David was shot?

22 A Yes.

23 Q And after David's shooting, did you continue to work  
24 at El Rancho?

25 MS. MACEDONIO: Objection.

**Ventura-Cross/Levine**

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1 THE COURT: Overruled. The same ruling with  
2 respect to the prior?

3 MS. CAPWELL: Yes.

4 THE COURT: You can answer that.

5 A Yes, only for two days.

6 Q All right.

7 And what happened after those two days?

8 A The business was closed.

9 MS. CAPWELL: Your Honor, no further questions.

10 THE COURT: Cross-examination.

11

12 CROSS-EXAMINATION

13 BY MR. LEVINE:

14 Q Good afternoon, Ms. Ventura.

15 A Good afternoon.

16 Q Did you see or hear Princessa offer to buy those four  
17 men drinks?

18 A No.

19 Q When you went to collect money from the four men, did  
20 any of them express surprise that it hadn't already been  
21 paid for?

22 A No.

23 Q Did anybody say to you, did any of those four men  
24 say, didn't Princessa pay?

25 A No.

**Ventura-Cross/Levine**

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1 MR. LEVINE: Nothing further.

2 MS. RANTALA: No questions, your Honor.

3 MS. CAPWELL: No redirect, your Honor.

4 THE COURT: All right.

5 You may step down.

6 I appreciate everybody staying a few minutes  
7 late to finish the witness.

8 (Whereupon, the witness leaves the witness  
9 stand.)

10 THE COURT: We don't have court tomorrow. And  
11 we will reconvene at 9:30, Monday.

12 Don't read anything about the case or listen to  
13 anything about the case. Do not read about the case, do  
14 not discuss the case with anyone.

15 Have a safe trip home.

16 (Whereupon, at this time the jury leaves the  
17 courtroom.)

18 THE COURT: Please be seated.

19 Can you just tell me who the witnesses are for  
20 Monday.

21 MR. DURHAM: At the pace we are going most of  
22 the week, we thought these witnesses would be on.

23 I believe it is going to be Joel Calderon and  
24 Detective Robert DePietro, Detective Milton Aponte.

25 THE COURT: All right.

1144

1 MR. DURHAM: Your Honor, depending if we get  
2 that far, there is also a medical examiner, Dr. Catanese,  
3 C-A-T-A-N-E-S-E, I think.

4 THE COURT: And one of them is a cooperating  
5 witness?

6 MR. DURHAM: Yes, your Honor.

7 THE COURT: You feel you are a little behind the  
8 scheduling we had.

9 MR. DURHAM: I wish every day is Thursday,  
10 Thursday we get a lot done. I was pessimistic at the  
11 beginning of the day. I would say we are a little behind  
12 but not as far behind as I thought we would be.

13 THE COURT: Any issues you wish to raise with  
14 respect to any of the witnesses?

15 MS. MACEDONIO: No, Judge.

16 MS. RANTALA: With regard to Calderon, I have  
17 spoken with the agent, and I need to go through some of  
18 the hieroglyphics, to coin that phrase, with regard to the  
19 notes that were taken. And they agreed to do that with  
20 me.

21 THE COURT: All right.

22 I will see you all on Monday.

23 Have a good weekend.

24 (Case on trial adjourned until 9:30 o'clock,  
25 Monday, February 25, 2013.)



1145

I-N-D-E-XW-I-T-N-E-S-S-E-S

C A R L A    S A N T O S	937
CROSS-EXAMINATION	937
BY MS. MACEDONIO	
CROSS-EXAMINATION	954
BY MS. RANTALA	
REDIRECT EXAMINATION	960
BY MR. DURHAM	
RECROSS-EXAMINATION	971
BY MS. MACEDONIO	
RECROSS-EXAMINATION	974
BY MS. RANTALA	
FURTHER REDIRECT EXAMINATION	974
BY MR. DURHAM	
 R A L P H    R I V E R A	 975
DIRECT EXAMINATION	976
BY MR. TIERNEY:	
CROSS-EXAMINATION	1020
BY MS. MACEDONIO	
REDIRECT EXAMINATION	1036
BY MR. TIERNEY	
 E D W A R D    H E S L I N	 1044
DIRECT EXAMINATION	1044
BY MR. TIERNEY	
CROSS-EXAMINATION	1069
BY MS. MACEDONIO	
REDIRECT EXAMINATION	1078
BY MR. TIERNEY	
 J E S S I C A    H E R R E R A	 1082
DIRECT EXAMINATION	1082
BY MR. DURHAM	
 J O S E P H    M A R I N O	 1098
DIRECT EXAMINATION	1098
BY MS. CAPWELL	
CROSS-EXAMINATION	1121
BY MR. LEVINE	
 S O N I A    V E N T U R A	 1126
DIRECT EXAMINATION	1127
BY MS. CAPWELL	
CROSS-EXAMINATION	1142
BY MR. LEVINE	

**E-X-H-I-B-I-T-S**

Government Exhibit 114 was received in evidence	986
Government Exhibit 116 was received in evidence	993
Government Exhibit 117-A was received in evidence	998
Government Exhibit 118-A was received in evidence	1001
Government Exhibit 115A received in evidence	1010
Government's Exhibit 128 was received in evidence	1056
Government's Exhibit 337 was received in evidence	1085
Government's Exhibit 325 was received in evidence	1090
Government's Exhibits 306, 314, 316 and 318 were received in evidence	1092
Government's Exhibit 330 was received in evidence	1105
Government's Exhibit 306 through 321 was received in evidence	1108
Government's Exhibit 328-A was received in evidence	1114
Government's Exhibits 331-A and 331-B were received in evidence	1117
Government's Exhibits 332-A and 332-B were received in evidence	1118